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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 78

MARSHALL L. MOTT, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 11, 1930

CERTIORARI GRANTED MAY 19, 1930

(34,941)

(34,941)

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[fol. 1]

IN UNITED STATES DISTRICT COURT
NORTHERN OKLAHOMA

Equity No. 343

UNITED STATES OF AMERICA, Plaintiff,

vs.

MARSHALL L. MOTT, Defendant

AMENDED BILL OF COMPLAINT—Filed Sept. 13, 1928

Comes now the United States of America, hereinafter designated the plaintiff, by, through and under authority of the Attorney General of the United States; and by John M. Goldesberry, United States Attorney for the Northern District of Oklahoma; Charles B. Selby, Special Assistant to the Attorney General, thereto specially assigned, and Ernest E. Danly, Attorney for the United States, and, with leave of court first had and obtained herein, files this, its amended bill of complaint, and for its cause of suit and [fol. 2] for grounds of relief against the defendant, Marshall L. Mott, alleges and complains as follows:

I

That some time prior to April, 1912, the Congress of the United States, by statutory enactments had created and conferred on the County Courts of the State of Oklahoma, the courts therein exercising exclusive probate jurisdiction, complete and exclusive jurisdiction as probate courts in matters of guardianship of the persons and estate of minor and incompetent Indians and freedmen, members of the Five Civilized Tribes of Oklahoma, of which said Creek Tribe is one, subject, however, to the express reserved authority of Congress to further legislate with reference thereto and subject also to the express authority conferred upon the Secretary of the Interior, with respect to the

restricted lands and the proceeds therefrom arising, belonging to the members of said Tribe of Indians, to remove such restrictions, such removal of restrictions to be under such rules and regulations concerning the terms of sale and disposal of the proceeds thereof for the use and benefit of the respective Indians as he, the Secretary, might prescribe, and subject also to the further exclusive authority of the said Secretary of the Interior to permit and give validity, by his approval, to oil and gas leases, on such allotted restricted lands, such approval of oil and gas leases also to be made by the said Secretary of the Interior under rules and regulations provided and promulgated by him, and not otherwise; that the authority so conferred on the Secretary of the Interior, and subject to which the authority of said County Courts of Oklahoma, as probate courts, was limited, is set forth and shown in sections 1 and 2 of the Act of Congress of May 27, 1908 (35 St. at L., 312), and so far as applicable reads as follows:

"That from and after sixty days from the date of this act the status of the lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall, as regards restrictions on alienation or incumbrance, be as follows:

"Sec. 1. * * * All homesteads of said allottees enrolled as mixed-blood Indians having more than half Indian blood, including minors of such degrees of blood, and all allotted lands of enrolled full-bloods, and enrolled mixed-bloods of three-quarters or more Indian blood, including minors of such degrees of blood, shall not be subject to alienation, contract to sell, power of attorney, or any other incumbrance prior to April twenty-sixth, nineteen hundred [fol. 3] and thirty-one, except that the Secretary of the Interior may remove such restrictions, wholly or in part, under such rules and regulations concerning terms of sale and disposal of the proceeds for the benefit of the respective Indians as he may prescribe. * * *

"Sec. 2. That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have not been removed may be leased by the allottee if an adult, or by guardian or curator under order of the proper probate court if a minor or incompetent, for a period not to exceed five years, without the privilege of

renewal; provided, that leases if restricted lands for oil, gas or other mining purposes, leases of restricted homesteads for more than one year, and leases of restricted lands for periods of more than five years, may be made, with the approval of the Secretary of the Interior, under rules and regulations provided by the Secretary of the Interior and not otherwise; and provided further, that the jurisdiction of the probate courts of the State of Oklahoma over lands of minors and incompetents shall be subject to the foregoing provisions . . .

That, at the time of the enactment of all applicable Acts of Congress, as well as at all times herein complained of, there existed and were in full force and effect, as forming the applicable statutory laws if the State of Oklahoma, the following provisions, appearing in the Compiled Statutes of Oklahoma, 1921, designated and reading as follows:

"1449. Petitions for guardians of incompetent or insane persons. When it is represented to the County Court upon verified petition of any relative or friend, that any person is insane, or from any cause mentally incompetent to manage his property, the judge must cause notice to be given to the supposed insane or incompetent person, of the time and place of hearing the case, not less than five days before the time so appointed, and such person, if able to attend, must be produced before him on the hearing."

"1450. Guardian appointed when. If after a full hearing and examination upon such petition, it appears to the judge of the County Court that the person in question is incapable of taking care of himself and managing his property he must appoint a guardian of his person and estate, with the powers and duties in this article (chapter) specified."

[fol. 4] "1451. Bonds and powers of guardian. Every guardian appointed as provided in the preceding section, has the care and custody of the person of his ward and the management of all his estate, until such guardian is legally discharged; and he must give bond to such ward, in like manner and with like conditions, as prescribed with respect to the guardian of a minor."

II

That one Jackson Barnett is a full-blood member and citizen of the Creek Tribe of Indians, duly enrolled as such opposite Roll No. 4264, and is a citizen and resident of the United States, with his legal domicile at all times herein mentioned within the County of Okmulgee, State of Oklahoma. That as such citizen and member of the said Creek Tribe of Indians, and under authority of the laws of the United States, there was duly allotted to the said Jackson Barnett, as his distributive share of the lands of the Creek Tribe of Indians, one hundred and sixty (160) acres of land, described as the southeast quarter of section 5, township 17, north of range 7, east, located in Creek County, State of Oklahoma.

III

That said Jackson Barnett is approximately of the age of seventy-six (76) years, and at all times herein mentioned was, and now is, a mental incompetent, illiterate, unable to read and write, and wholly incapable of understanding, or comprehending the value, condition, character, nature or extent of his property, and wholly incapable of managing, conserving, protecting, preserving or caring for the same, and wholly incapable of discerning and understanding the motives and designs of persons with whom he came in contact, as well as wholly incapable of comprehending the import or nature of business transactions, and instruments of writing, of the most simple character, and particularly was wholly incapable of understanding and comprehending the purported trusts, instruments, agreements, negotiations, transactions, matters and things hereinafter particularly mentioned, and of which the United States hereinafter complains.

IV

The United States, further complaining, avers that by order of the County Court of Okmulgee County, Oklahoma, on the twenty-ninth day of April, 1912, the said Jackson Barnett was adjudged to be mentally incompetent, and incapable of conducting and managing his affairs and prop-

erty and caring for his person, and did thereupon appoint [fol. 5] one Carl J. O'Hornett, as guardian of the person and estate of said Jackson Barnett, under which appointment Carl J. O'Hornett qualified, and assumed the duties of such guardian, and in which capacity he continued to act until about the thirteenth day of June, 1923, at which time he resigned; that during all of said time the said Carl J. O'Hornett was recognized, treated, and considered by all departments of the Government as the duly constituted guardian of the person and estate of the said Jackson Barnett, and at all of said times the said Jackson Barnett was treated and considered as a mental incompetent, and in all respects incapable of managing his affairs and of caring for his person, and at all of said times the County Court of Okmulgee County, Oklahoma, was recognized as a federal agency, authorized to act as such in the matter of the guardianship of said Jackson Barnett, and that the said Carl J. O'Hornett, under orders of said County Court as such agency, was authorized to receive from the Department of the Interior such amounts as the officials of said Departments deemed proper to release to him, to be by him as such guardian disbursed for the use and benefit of the said Jackson Barnett; that said appointment was subsequently determined by the Supreme Court of Oklahoma in December, 1926, to be invalid.

V

The United States, further complaining, avers that soon after the appointment of the said Carl J. O'Hornett as guardian, and pursuant to an order of said County Court in said guardianship proceeding, the said Carl J. O'Hornett, under his name and designation as guardian of the said Jackson Barnett, executed as lessor an oil and gas lease in form prescribed by the Secretary of the Interior covering the said restricted allotment of land of the said Jackson Barnett, which said lease ran in the name of H. U. Bartlett, as lessee, and was for a period of ten years thereafter and as long as oil and gas should be produced thereon, which said lease was approved by the then Secretary of the Interior on the 13th day of September, 1912; that, among other provisions, said lease expressly provided that

payments of the reserved oil and gas rentals and royalties thereunder should be made to the United States Indian Superintendent at Muskogee, Oklahoma, for the use and benefit of said Jackson Barnett, under which terms the lessee did thereafter, from time to time, pay into said office, as the depository, the accruing oil and gas rentals and royalties under said lease, until about August 1, 1914, when said office was abolished by Act of Congress, and thereafter, for some eight years, paid into the office of the [fol. 6] Superintendent for the Five Civilized Tribes at Muskogee, the succeeding depository created by Act of Congress, until the same had accumulated therein in an amount in excess of One Million One Hundred Thousand Dollars ($1,100,000.00) and which amount, from time to time, by direction of said Secretary of the Interior, was converted into United States registered bonds, as herein more specifically mentioned.

VI

The United States, further complaining, avers that, as a result of explorations and developments on said land, and of the transformation of the said Jackson Barnett from poverty to a state of great wealth, great publicity was given to the fact that said Jackson Barnett was aged, illiterate, mentally incompetent, under guardianship, unmarried, and possessed of great wealth; that during the latter part of the year, 1919, one Anna Laura Lowe, hereinafter designated Anna Laura Barnett, a woman of then about thirty-five years of age, who did not know the said Jackson Barnett, having learned of his great wealth, situation and condition, as aforesaid, did immediately conceive and formulate a plan and scheme to surreptitiously abduct or kidnap him from his home, located in an isolated section of said county, if need be by force, and take him, without ability on his part to understand her purpose, carry him away and procure a pretended marriage, and thereby, and in such manner and by such means as might thereafter be found expedient or necessary, to defraud him out of a large part of or all his wealth and estate, and also defraud the United States by interfering with and by obstructing it in the discharge of its duty to protect him, and to pro-

tect, safeguard and conserve his said property, as a ward of the Nation; as well as to defeat the authority and jurisdiction of the said County Court of Okmulgee County over his person and estate, as well as the authority of said guardian thereover, by removing him, the said Jackson Barnett, out of the jurisdiction of the County Court and of the state, and to thus and thereby ultimately obtain, acquire, and procure unlawfully, all of the said bonds and other funds and estate and property of the said Jackson Barnett; that in furtherance of her said wrongful and unlawful scheme, she, Anna Laura Barnett, in an attempt to carry out the same, did, on or about the last day of January, 1920, make futile attempts to procure a marriage license in Oklahoma, under which to marry the said Jackson Barnett, and did cause herself to be driven, in the night-time, to the said home of Jackson Barnett, where she, well knowing his said mental incompetency and want of understanding, forcibly placed him in her automobile, [fol. 7] and therein detained him and transported him to two different county seats in the State of Oklahoma, in her efforts so to procure a marriage license, which license was refused; and thereafter, and on or about the twenty-second day of February, 1920, in furtherance of her said wrongful, unlawful and fraudulent plan and scheme, she again, in the night-time, in an automobile, drove to the said home of said Jackson Barnett, where, again by force, and without an understanding or appreciation on his part as to her said purpose, placed him in said automobile, and by force detained him, and carried him out of the State of Oklahoma into the State of Kansas, and to the Town of Coffeyville therein, a distance of some one hundred and fifty miles, where, having procured a pretended marriage license purpoting to authorize a marriage between herself and the said Jackson Barnett, she procured a pretended marriage ceremony to be performed by a justice of the peace of said Town of Coffeyville, pretending to unite herself and the said Jackson Barnett in wedlock; that immediately following she, the said Anna Laura Barnett, by force detained the said Jackson Barnett in a room in said Town of Coffeyville, and refused to permit him to be seen by the said Carl J. O'Hornett or others interested in his welfare.

VII

That thereupon the said Anna Laura Barnett, in furtherance of her said fraudulent scheme, brought to the attention and made known to Harold C. McGugin and Walter S. Keith, then composing the firm of Keith and McGugin, engaged in the practice of law at Coffeyville, Kansas, her said purpose and plan to so obtain the said bonds, funds and property of the said Jackson Barnett, through the said pretended marriage, then making known to the said Harold C. McGugin and Walter S. Keith all the facts and circumstances concerning the taking of the said Jackson Barnett to said Town of Coffeyville, and further advised them that she anticipated interference with the accomplishment of her said plan by the guardian of said Jackson Barnett and by officials of the government, whereupon she, the said Anna Laura Barnett, and the said Harold C. McGugin and Walter S. Keith, conspired together and entered into an agreement whereby and whereunder they, the said Anna Laura Barnett, Harold C. McGugin and Walter S. Keith, should and would, take all steps, and do all things deemed by them, or any of them, necessary or expedient in the accomplishment of her said scheme to obtain the entire property and estate of Jackson Barnett, and to secure and make provision for the acquisition of his estate upon his death. That thereupon the said Anna Laura Barnett, then [fol. 8] being advised that the said pretended marriage of the said Anna Laura Barnett to the said Jackson Barnett, pretended to be consummated in said Town of Coffeyville, Kansas, was prohibited by a statute of the State of Kansas prohibiting the marriage of a person of unsound mind, and making such marriage a nullity, did, in furtherance of said fraudulent plan, confederation and conspiracy, immediately transport and take the said Jackson Barnett into the State of Missouri, where the said Anna Laura Barnett and the said Harold C. McGugin, procured a second pretended marriage license and again caused a pretended marriage ceremony to be performed pretending to unite the said Anna Laura Barnett under the name of Anna Laura Lowe to the said Jackson Barnett, the said Jackson Barnett at no time having mental capacity to understand or to give consent to being taken into the State of Kansas and into the State of

Missouri, and of procuring the said marriage license, and of entering into the said pretended marriage. That immediately thereafter, and in furtherance of and in aid of the said fraudulent scheme, confederacy, and conspiracy, the said Anna Laura Barnett and said Harold C. McGugin and Walter S. Keith, entered into contracts in writing, by the terms of which the contracting parties agreed upon a division of such sums as they might be able to procure from the said Jackson Barnett while living, and from his estate after his death, and thereunder and in furtherance of said fraudulent scheme, Confederacy and conspiracy, and for the purpose of aiding in the accomplishment thereof, did thereupon, and from time to time thereafter, draw written wills purporting to make and name the said Anna Laura Barnett as the principal or sole beneficiary thereunder of the estate of said Jackson Barnett, and caused the said Jackson Barnett, in his said mentally incompetent condition, to place his thumb print thereto, he, the said Jackson Barnett, having at no time any ability to ratify the making of said pretended wills, or testamentary instruments.

VIII

That about the year 1922, the said Anna Laura Barnett and Harold C. McGugin and Walter S. Keith, having previously, in furtherance of their said fraudulent scheme and plan, made repeated demands upon said guardian and County Court aforesaid for the release to them of large amounts of the restricted funds of said Jacksn Barnett, then having knowledge that one A. J. Ward, was then, and for a long time had been, under employment by and as Tribal Attorney of the said Creek Tribe of Indians, and that by reason of his employment was, by the Indians, favorably regarded, and also regarded favorably by the offi- [fol. 9] cers of the Department of the Interior having to do with Indian Affairs and who then, and at all times herein complained of, well knew and understood the said general plan and scheme of the said Anna Laura Barnett and Harold C. McGugin and Walter S. Keith, as well as being advised of all the acts of the said Anna Laura Barnett and Harold C. McGugin and Walter S. Keith in relation thereto

and in connection therewith and as herein alleged, did then, at the request and solicitation of the said Anna Laura Barnett and Harold C. McGugin and Walter S. Keith, agree and promise to co-operate with them, and to aid and assist them in the accomplishment of said plan and scheme to the end of taking such steps and doing such acts as thereafter might be deemed expedient and necessary in procuring the release of the restricted bonds and funds of the said Jackson Barnett, as aforesaid, from the custody and control of the Secretary of the Interior, and to procure the delivery of said funds and bonds by the said Secretary of the Interior, or so much thereof as might be procured, to the said Anna Laura Barnett; that soon thereafter and in furtherance of said agreement, plan and scheme, the said A. J. Ward went to the City of Washington, D. C., where he was met by Harold C. McGugin, where both thereof met the defendant, Marshall L. Mott, a friend and former partner of the said A. J. Ward, and a former Tribal Attorney of said Tribe of Indians, and who was known by the said A. J. Ward and Harold C. McGugin and Walter S. Keith to be familiar with the manner and practice of handling matters affecting the Indians and their property before the Department of the Interior; that the said A. J. Ward and Harold C. McGugin then made known the said plan and scheme as aforesaid to said Marshall L. Mott, procured his assurance that he would counsel, advise and assist in the accomplishment of said scheme, and the said Harold C. McGugin, with the knowledge and approval of the said A. J. Ward, and in the name of and as agent for, the said Anna Laura Barnett, agreed to give him, the said Marshall L. Mott, $15,000 of said bonds, and if, received by and delivered to her, the said Anna Laura Barnett, under which said agreement the said Marshall L. Mott did thereafter, from time to time counsel, advise and assist the said A. J. Ward, Anna Laura Barnett and Harold C. McGugin and Walter S. Keith in respect to the consummation of said plan and scheme, as is hereinafter more particularly mentioned.

IX

That thereafter it was agreed between the said Anna Laura Barnett, A. J. Ward, defendant Marshall L. Mott and

[fol. 10] Harold C. McGugin and Walter S. Keith that in order to effectuate the said plan and scheme, all said parties then well knowing that there was in excess of $1,100,000 of the restricted bonds and funds of the said Jackson Barnett then held by and under the control of Albert B. Fall, Secretary of the Interior, that an instrument should be drawn purporting to be the act of the said Jackson Barnett, and therein advise the Interior Department that the said Jackson Barnett desired to make a distribution of the said bonds by gift thereof to the American Baptist Home Mission Society for the benefit of certain Indian Schools in the amount of $550,000 and to the said Anna Laura Barnett in the amount of $550,000 and that the same should purport and appear to be the request of said Jackson Barnett to the Secretary of the Interior to remove the restrictions from said bonds and funds, and to grant the said application, and to make a distribution of said funds and bonds in accordance therewith, and that said instrument should set forth and contain such other recitals therein, purporting to be the reasons and grounds conceived and proposed by the said Jackson Barnett as the basis for the making of said donations, all to create the impression and as would make it appear that the same and all thereof was the rational and independent act, intent, wish and desire of the said Jackson Barnett, all of which said pretended reasons and grounds so to be therein incorporated are fully set forth and shown in the said instrument hereinafter more particularly referred to and set forth and shown by copy thereof hereto attached, marked "Exhibit A," and made a part hereof, and same were therein incorporated for the purpose and intent of inducing the said Albert B. Fall, Secretary of the Interior, to rely thereon, believe the same and to accordingly thereupon grant said pretended request and to authorize and make the distribution of the said bonds and funds accordingly; and it was also agreed between said named persons participating therein that a written statement in the nature of a pretended confirmation of said pretended instrument of gift should be formulated and presented to said Secretary of the Interior, the said two instruments to bear the thumb print impression as a signature of the said Jackson Barnett, and both thereof to be witnessed by the said A. J. Ward over his designation as

Tribal Attorney for said Tribe of Indians. That it was also agreed between the said participating parties that a written recommendation should be drawn and signed by the said A. J. Ward over his designation as Tribal Attorney, which said recommendation so to be made by the said A. J. Ward should contain statements and representations with reference to said pretended thumb print instrument of gift of the said Jackson Barnett, as well as statements relating to [fol. 11] the said Jackson Barnett and his estate, as would likely influence and induce the said Albert B. Fall, Secretary of the Interior, to believe the statements made in the said pretended thumb print application and to rely thereon, and to accordingly release said funds and bonds and make the distribution thereof accordingly, the particular representations and statements so to be incorporated in said recommendation of the said A. J. Ward being particularly shown by copy thereof hereto attached, marked "Exhibit B," and made a part hereof, and as more particularly hereinafter referred to.

That thereupon and in furtherance of said agreements, understandings, plan and scheme and under the advice and counsel of the said participating parties, the said A. J. Ward prepared said pretended instrument of request and gift so referred to, and the said recommendation so to be by him presented for said purposes aforesaid and thereupon procured the said Jackson Barnett to affix to said pretended instrument of gift his thumb print mark impression, and did witness the same, upon which thereafter, the said Anna Laura Barnett, in keeping with said understanding, did thereupon endorse her approval of said pretended instrument of gift and her acceptance of the terms thereof. The United States, further complaining avers that thereafter and in furtherance of said agreements, plan and scheme, and to-wit, on or about the 29th day of January, 1923, the said named participating parties to the preparation of the said two instruments, and with the same purpose and intent as aforesaid, did procure the drawing of an instrument by the said A. J. Ward addressed to Albert B. Fall, Secretary, as aforesaid, purporting therein to represent that the said Jackson Barnett approved the purported instrument of gift and the purported request therein made, together with the statements therein contained, all as is

shown by copy marked "Exhibit C," hereto attached and made a part of this complaint, to which said instrument the said named participating parties procured the thumb print impression of the said Jackson Barnett to be affixed.

X

The United States, further complaining, avers that at no time did the said Jackson Barnett have the slightest understanding that said instrument were being prepared, or had been prepared, nor had he any understanding or capacity to understand the import, contents, nature or purpose thereof, all of which was at all times well known by each and every of the said named participating parties therein.

XI

[fol. 12] The United States, further complaining, avers that the said named participating parties, as a part of the said plan and scheme, agreed that the facts with reference to consummating the same should be withheld from the said guardian and County Court as aforesaid, and that the acts with reference thereto should be carried on secretly, without publicity, if possible, without information reaching said guardian and County Court, avers that upon the completion of said instruments as aforesaid, the said A. J. Ward, with the knowledge and approval of each of the said named parties participating in the preparation thereof, caused the said instruments to be thereupon transmitted to the said Albert B. Fall, Secretary of the Interior aforesaid, with the intent and for the purpose all as hereinbefore alleged.

XII

The United States, further complaining, avers that the said instruments so referred to were false, fictitious, and fraudulent, and so known at all times to be by each of the said named parties so participating in the preparation and presentation thereof, and in the preparation thereof, and in the respects particularly stated hereinafter, to-wit:

(1) That the said pretended thumb print request and gift was in fact not the act and deed of the said Jackson

Barnett; were not statements and expressions at any time formulated, conceived or made by the said Jackson Barnett, but in truth and in fact were statements, expressions, declarations and suggestions conceived wholly and alone by the said named parties so participating in the preparation and presentation of said instruments wholly independent of the said Jackson Barnett.

(2) That the statements therein to the effect that Jackson Barnett had no living relatives or kindred were false in fact, and so known by the said parties so participating in the drawing thereof to be, on this, that the said Jackson Barnett then had a living half-brother, David Barnett, duly enrolled, as well as other living blood relatives, members of said Tribe.

(3) That the further statement in said instrument to the effect that it was desired that said pretended gift be made to the said Anna Laura Barnett because she had shown every consideration to the said Jackson Barnett, was false, when in truth and in fact, as alleged in this bill, she, the said Anna Laura Barnett, had kidnapped him, and, aided by the said Harold C. McGugin and Walter S. Keith, [fol. 13] constantly endeavored to withdraw and remove the said Jackson Barnett from the control of said guardian and County Court; had manipulated him into affixing his thumb print to numerous wills in which she, the said Anna Laura Barnett, was named as chief beneficiary; that she had entered into contracts with the said Harold C. McGugin and Walter S. Keith whereunder they were to receive large portions of the property of said Jackson Barnett while living, and of his estate when dead, that should come into the possession of the said Anna Laura Barnett as a result of her said plan and scheme in return for the assistance thereby given to her in aid thereof by the said Harold C. McGugin and Walter S. Keith; that she then had entered into an agreement to deliver to the said Harold C. McGugin and Walter S. Keith $150,000 of said bonds, and to said defendant Marshall L. Mott $15,000 thereof when received by her.

(4) That the further representation therein to the effect that she, the said Anna Laura Barnett, had brought Jackson Barnett from poverty and degredation was false and

untrue in this, that at the time of said pretended marriage there had been accumulated as the property of said Jackson Barnett, as a result of said oil lease upon his said tract of land, largely through the management of the said guardian and County Court, in excess of $1,100,000, and that during all of said time said guardian had expended to or for the use and benefit of Jackson Barnett in excess of $650 a month in the maintenance of a home and for servants, medical attention and other requirements, and in addition a Paige automobile in excess of $2,600.

XIII

And the United States avers that the representations set forth and contained in the written recommendation of the said A. J. Ward, recommending to the Department of the Interior the granting of said pretended request of the said Jackson Barnett to make the distribution of said bonds and funds were false and untrue, and at all times well known and understood by each of said named participating parties therein to be false and untrue in this, that the said Jackson Barnett had not submitted to the said A. J. Ward, as in the said recommendations represented, the said thumb print instrument or bequest by the said Jackson Barnett; that the said Jackson Barnett had not, as in said recommendation stated, undertaken to make the gifts, or any gifts, of his property or estate of any character, but that [fol. 14] in truth and in fact, the said false, fictitious, and fraudulent instrument in its entirety had been prepared by the said A. J. Ward, with the assistance, advice, counsel and suggestions of the said Anna Laura Barnett, Marshall L. Mott, Harold C. McGugin and Walter S. Keith, and each and every of the provisions, statements, matters and things set forth and mentioned in said purported thumb print instrument were wholly conceived, formulated and stated therein for the purpose and with the intent to make the same appear as the independent act of the said Jackson Barnett, said defendant Marshall L. Mott, and his associates in said conspiracy knowing that the said Jackson Barnett did not, and could not, conceive and formulate the same.

That the further representations set forth in said recommendation of the said A. J. Ward to the effect that the said

Jackson Barnett had signed the thumb print instrument, designated by said A. J. Ward in his said recommendation as a communication was entirely false, for in truth and in fact the thumb print impression of said Jackson Barnett thereon was made thereon by the act of the said A. J. Ward, by his manipulation of the hand of the said Jackson Barnett, after taking the said Jackson Barnett into a private room while the said Anna Laura Barnett and said Harold C. McGugin waited at the door in an adjoining room, the said Jackson Barnett being incapable of understanding in the slightest degree the purpose and object of his being so manipulated, and without the slightest ability to understand that the instrument to which his thumb print impression was caused to be attached had relation whatsoever to a distribution of his funds.

That the further representation in said recommendation of the said A. J. Ward to the effect that the said Jackson Barnett had undertaken to make a gift of Five Hundred and Fifty Thousand Dollars ($550,000) to the American Baptist Home Mission Society was false and untrue in this, that in truth and in fact the said Jackson Barnett had not conceived, and was incapable of conceiving, a purpose and intent to make any gift or donation to said Society; that he had no knoweldge of the existence of said Society; and was incapable of understanding anything concerning the fact of its existence, and had no understanding as to the nature of the Bacone College and Murray Orphans Indian School, mentioned in said instrument, and had never manifested, and was incapable of manifesting any concern in the said named institutions, and had at no time formed a desire or expressed a wish or intent to make any gifts of his property for the benefit thereof, and was at all times incapable of so doing.

[fol. 15] That the further representation in said recommendation of the said A. J. Ward that said Jackson Barnett had requested the officials of the Department of the Interior to attend to the details of said transaction or involving said pretended gifts was false and untrue in this, that in truth and in fact Jackson Barnett had not so requested, and was incapable of so requesting, and did not in fact have the slightest understanding that the disposition of his property was in contemplation by the parties

so participating in said plan and scheme, as herein alleged.

That the inference by innuendo in said recommendation of the said A. J. Ward that the said Jackson Barnett had negotiated the arrangements leading up to the preparation of said purported thumb print bequest and instrument of gift was false and untrue, in this, that in truth and in fact said plan and purpose, and all negotiations with reference thereto, were made and carried on without consideration of the said Jackson Barnett, and without notice to the guardian thereof, and to the County Court in which said guardianship proceedings were pending, and all of said negotiations were the independent acts of the said named participating parties in said matter, with the purpose and intent thereof to thereby accomplish the said fraudulent scheme and conspiracy, as in this bill alleged.

That the further representation in said recommendation of said A. J. Ward to the effect that Jackson Barnett was a typical full-blood Indian, possessed of all the inclinations and characteristics which are usual in the Indian, was false and untrue, and was known by said participating parties so to be, in this, that in truth and in fact the majority of the full-blood Indian members of said Tribe were possessed of a fair education, could read and write, engage in ordinary business transactions, and in large measure, as the result of association with white people, had adopted their customs and habits, whereas in truth and in fact said Jackson Barnett was so wholly different in the respects in this complaint noted and alleged, as to place him in a class by himself.

That the statement in said recommendation of the said A. J. Ward to the effect that notwithstanding the income of said Jackson Barnett was sufficient to support him in luxury, that the amount he had received from his guardian was very small, and that he lived in exactly the same style as before he acquired his great wealth, and that the guardian made no effort to improve his living conditions, were false and untrue, and so known by the said participat- [fol.16] ing parties therein to be false and untrue in this, that during the period of some twelve years and to the date of making and presentation of said recommendation by the said A. J. Ward, the said guardian had expended money

in amounts in excess of $650 per month to and for the benefit of said Jackson Barnett, in the way of supplies, servants' hire, medical attention, home and otherwise, all as in this complaint alleged.

That the further representation in said recommendation of the said A. J. Ward to the effect that said guardian ignored repeated requests of Jackson Barnett for a suitable home in some locality of his choosing was false and untrue in this, that the said Jackson Barnett at no time, in any manner, requested or indicated a desire to live elsewhere than in his home in Okmulgee County, and had at all times, so far as he was able in his mental condition, indicated his desire to live in the same place among his old friends and in the midst of the scenes in which he had so long lived in Okmulgee County, and that the only demands or requests for a home elsewhere were made by the said Anna Laura Barnett and the said Harold C. McGugin.

That the representations in the said recommendation of the said A. J. Ward to the effect that said Anna Laura Barnett, as wife of the said Jackson Barnett, had done all that any woman could reasonably be expected to do to advance his interests, were false and were known by said participating parties at the time to be false, in this, that said Anna Laura Barnett, since the time of her said pretended marriage to the said Jackson Barnett, aided and assisted by the said Harold C. McGugin and Walter S. Keith, and later by said A. J. Ward, as in this bill alleged, had continually and persistently kept him from the custody and protection of the said guardian and County Court and from his old-time friends and surroundings, and had by repeated efforts sought to obtain large amounts of money from the guardian of said Jackson Barnett and had entered into contracts with attorneys whereby, in aid of her said plan and scheme, she was to distribute and pay large sums thereto, all as in this complaint alleged.

That the further representation in said recommendation of the said A. J. Ward to the effect that said Anna Laura Barnett since said pretended marriage had diligently and studiously avoided the appearance of evil and had conducted herself in a manner wholly commendable as a wife, was false and untrue, and known by said participating parties so to be, in this, that in truth and in fact throughout

said period of time, she, the said Anna Laura Barnett, in conjunction with the said Harold C. McGugin and Walter [fol. 17] S. Keith, had constantly and diligently not only made efforts to acquire the *the* release of large amounts of the funds and money of said Jackson Barnett, as previously alleged, but had also from time to time manipulated the said Jackson Barnett into placing his thumb-print signature to wills naming herself as chief beneficiary, and to contracts and instruments whereunder accounts received by her from the funds of Jackson Barnett while living, and from his estate after his death, should be appropriated and distributed to and among those for whose benefit the respective instruments were made.

That the representations in said report of the said A. J. Ward to the effect that prior to and up to the said pretended marriage the guardian of said Jackson Barnett took no interest whatsoever in his personal welfare and would dole out small amounts to him from time to time as he would to a child, were false and untrue, all as heretofore in this bill alleged.

That the further representation in said recommendation of said A. J. Ward to the effect that a change came upon the said Jackson Barnett as a result of his said marriage such as to make him a much happier man, is false and untrue in this, that in truth and in fact, so far as he was able in his condition of mental incompetence to indicate and express his feelings, he had constantly and repeatedly indicated a desire to be relieved from said restraint of the said Anna Laura Barnett and to return to his old home, friends and scenes.

That the representation in said recommendation of the said A. J. Ward to the effect that a contest or fight had been made to annul the pretended marriage of the said Anna Laura Lowe to the said Jackson Barnett, and that large amounts of money of Jackson Barnett had been expended therefor, was false and untrue, and so known by said participating parties so to be, in this, that no proceedings had been instituted and no steps taken to annul said pretended marriage.

That the further representation in said recommendation of the said A. J. Ward to the effect that the said guardianship over the person and estate of Jackson Barnett in

Oklahoma was an effort to afford opportunity for the extraction of court costs, attorneys' fees and guardian's fees under the pretext of management of his estate were false and untrue, and so known by said participating parties to be, in this, that the same had been instituted pursuant to the said Acts of Congress and laws made applicable thereby for the purpose of creating a valid oil lease upon said tract of land, and for the purpose of complying with the [fol. 18] applicable laws and safeguarding and protecting the trust property of the said Jackson Barnett, for his use and benefit.

That the further representation in said recommendation of the said A. J. Ward to the effect that those connected with the said guardianship proceedings had wrongful designs upon his property, were false and untrue, and so known by said participating parties so to be, in that, in truth and in fact said persons so connected with said guardianship proceedings had for years safeguarded and preserved the property of the said Jackson Barnett so far as the same was under their control, and the said County Court and guardian desired that same should be conserved, protected and administered for the use and benefit of the said Jackson Barnett in the manner as required by law.

XIV

The United States avers that all of said representations in said recommendation of the said A. J. Ward so contained were so falsely, intentionally and knowingly made by the said named persons so participating in the preparation thereof to create the impression in the mind of the said Secretary of the Interior and other officers of the said Department before whom the said instruments should come for consideration that the said statements, representations and matters so therein set forth were in all respects true; that the same were the independent and rational acts of the said Jackson Barnett; that the same were in fact his expressions, statements and declarations, and to induce the said Secretary of the Interior to believe the same, rely thereon and to make delivery and distribution of the said bonds in accordance therewith.

XV

The United States, further complaining, avers that the said A. J. Ward, in keeping with the plan and scheme and in furtherance thereof, did cause the said false, fictitious and fraudulent purported written requests of the said Jackson Barnett, together with the said false and fraudulent written recommendation of said A. J. Ward, together with the said false and fictitious written purported confirmation and approval of the said Jackson Barnett, to be transmitted and delivered to the said Albert B. Fall, Secretary of the Interior, on or about the 30th day of January, 1923, for his official action thereon. That thereupon, and about the 3d day of February, 1923, the said instruments being then before and in the hands of the said Albert B. Falls, Secretary of the Interior aforesaid, for official action; that the [fol. 19] said Albert B. Fall, as such officer and as Secretary of the Interior, did consider the same and all thereof, and did then approve the said pretended thumb print request of the said Jackson Barnett, and did then order and direct that said bonds in the amount of $1,100,000 be accordingly distributed and delivered by delivering $550,000 thereof to the said A. J. Ward for delivery to the said American Baptist Home Mission Society, and the remaining $550,000 delivered to the said Anna Laura Barnett, and said bonds were so then delivered and distributed, the said Anna Laura Barnett being then delivered the following of said bonds, to-wit:

U. S. First Liberty Loan Bonds #220	$50,000.00
U. S. Second Liberty Loan Bonds #6708 to 6711 inclusive, $10,000.00 each	40,000.00
U. S. Second Liberty Loan Bonds #683	50,000.00
U. S. Third Liberty Loan Bonds #1256	5,000.00
U. S. Third Liberty Loan Bonds #17824 to 17832 inclusive, $5,000.00 each	45,000.00
U. S. Third Liberty Loan Bonds #16288 to 16236, inclusive, $10,000.00 each	90,000.00
U. S. Third Liberty Loan Bonds #102	50,000.00
U. S. Fourth Liberty Loan Bonds #1572 and 1573, $100,000.00 each	200,000.00
U. S. Fourth Liberty Loan Bonds #8721 and 8722, $10,000.00 each	20,000.00

The United States further avers that the acts of the said Anna Laura Barnett, A. J. Ward, Harold C. McGugin, Walter S. Keith and the defendant, Marshall L. Mott, in carrying out their plan and scheme as herein alleged were intended to and did operate to obstruct, interfere with, and defeat the government in the exercise and discharge of its governmental functions in connection with the protection and preservation of the funds and property of the said Jackson Barnett, and the United States and the said Jackson Barnett were thereby defrauded; that in carrying out said scheme and conspiracy large sums of money were from time to time wrongfully and unlawfully obtained by said persons so engaged in said conspiracy, as herein alleged, from the funds and property of the said Jackson Barnett in amounts to the complainant unknown; that immediately upon the receipt of said registered bonds by the said Anna Laura Barnett, she, in accordance with said intent, plan and purpose of the said parties to said conspiracy and fraudulent agreement, as aforesaid, delivered to said Harold C. McGugin and Walter S. Keith part of said bonds in [fol. 20] the amount, and of the par value of $150,000, who thereupon immediately and in compliance with the terms of the agreements and understandings of the said parties and the said Marshall L. Mott, as aforesaid, and with full knowledge on his part as to the said manner of acquiring the same, delivered to the said Marshall L. Mott of said bonds the amount of, and of the par value thereof, of not less than $15,000, and the United States avers that is is informed and believes, and therefore alleges the fact to be that the said Anna Laura Barnett out of said bonds so received by her, and out of other moneys and funds by her received under said fraudulent scheme and plan, and belonging to said Jackson Barnett, paid and distributed other large amounts thereof to said Marshall L. Mott, the amount thereof being to the United States unknown.

XVII

The United States avers that by reason of the premises the said bonds and funds of the said Jackson Barnett so received by and passing into the hands of said defendant, Marshall L. Mott, all as herein alleged, as well as any property into which the same or any part thereof was converted

by said defendant, were and are, the property of said Jackson Barnett, and title thereto is held by said defendant in trust for the use and benefit of Jackson Barnett, subject to the federal restrictions thereon imposed, as in this bill averred.

Wherefore, the United States prays that the defendant, Marshall L. Mott, be required to fully answer this complaint, and to fully disclose the particular bonds herein referred to, or the converted form thereof, coming into his hands, and to fully disclose the description thereof by numbers, issue and amount, and, if any part thereof has been disposed of or converted by the said defendant, to disclose to whom, and for what consideration, and by whom received, and to disclose fully whether the same remains in the said converted form or whether same was converted, and of so, into what, and the character, nature and description of the property so received therefor, and by whom now held, and how and where located, and to fully account for all thereof, as well as any other funds received directly or indirectly from the said Anna Laura Barnett, or Jackson Barnett, on account of any of the matters and transactions in this bill complained of, that, upon an acccounting being had herein, the court decree that as to any property now held and owned by said defendant, acquired with the proceeds of any of the bonds or funds coming from the said Anna Laura Barnett, or Jackson Barnett, that the court decree the same to be held by said defendant in trust for [fol. 21] the use and benefit of the said Jackson Barnett subject to the restrictions thereon imposed by law, and if the same be found to be personal property that the same be ordered by this court delivered into the hands of the clerk of this court to be delivered to the Secretary of the Interior, to be held for the use and benefit of said Jackson Barnett as in manner by law provided, and if found to be invested in real estate that the title thereto be decreed to be conveyed by the defendant so holding the same, to the said Jackson Barnett, under such conditions as to the restrictions against alienation thereof as is provided by law.

That if, upon an accounting it be found that any amount of the said bonds and funds so alleged to have been received by the defendant cannot be traced into other property and identified, then that the United States have per-

sonal judgment against the defendant, Marshall L. Mott, in favor of the United States for the use and benefit of the said Jackson Barnett for the highest value thereof since the time of so receiving said bonds, and interest thereon.

That the United States in behalf, and for the use and benefit of Jackson Barnett, be decreed to have all other, further and proper relief in equity to which it may, under the facts and the law, be entitled, and for the costs of this cause.

United States of America, Plaintiff, by Jno. M. Goldesberry, United States Attorney, Northern District of Oklahoma, by Charles B. Selby, Special Assistant to the Attorney General of United States, by Ernest E. Danly, Attorney.

Duly sworn to by Ernest E. Danly. Jurat omitted in printing.

[fol. 22] EXHIBIT A TO AMENDED BILL OF COMPLAINT

Washington, D. C., December 15, 1922.

Hon. Albert B. Fall, Secretary of the Interior (through the Commissioner of Indian Affairs).

SIR: The undersigned, Jackson Barnett, a full-blood Creek Indian citizen enrolled opposite No. 4524 for reasons hereinafter stated, hereby makes the following gifts out of that part of his estate consisting of U. S. Liberty bonds and cash now in the custody and control of the Secretary of the Interior and restricted property under the law, such gifts to be effective immediately and absolutely and to be subject to the approval of the Secretary of the Interior as hereinafter provided and subject to such other terms and conditions as are herein imposed:

1. In consideration of love and affection and in appreciation of the faithful performance of her duties to me as my lawful wife, I give to Anna Laura Barnett, the sum of $550,000, said sum to be her property absolutely and unconditionally.

2. Having been deprived of the benefits of an education in my youth and early manhood and by reason thereof

being fully aware of the disadvantages which accrue to me not equipped with an education and especially to the Indian, it is my desire to promote education among my people to the end that the younger generation may not be handicapped by a lack of education, I give to the American Baptist Home Mission Society, a corporation of 23 East 26th Street, New York City, U. S. Liberty bonds in the sum of $550,000, said bonds or the proceeds thereof, if converted into other securities or investments to be held and retained by said society as a permanent endowment fund for the use and benefit of Indian University, generally known as Bacone College, an Indian school located at [fol. 23] Bacone, near Muskogee, Oklahoma, and the Marrow Indian Orphan's Home at Bacone, Oklahoma, the income from such endowment to be utilized and distributed between said school, and said orphans' home in such proportions as the Board of Directors or other supervising body of said society may deem proper and for the best interests of said institutions.

In consideration of said gift said society shall be required to pay to the Superintendent for the Five Civilized Tribes at Muskogee, Oklahoma, for my use and benefit the sum of $20,000 annually, payable in quarterly installments so long as I shall live. In the event of the removal of restrictions by operation of law or otherwise, prior to my death, such annual income shall then and thereafter be paid to me personally during my lifetime. To insure the payment of said $20,000 annually as above provided, said society shall be required to furnish suitable guarantee by bond or other legal and binding obligation, to be approved by the Secretary of the Interior.

For your information and for the information of those who may feel inclined to interest themselves in my affairs, I here state that I have no living relatives or kindred who either by ties of blood or by their conduct toward me, are entitled to any part of my estate or to any consideration from me whatsoever. During the greater part of my life and until I become wealthy through the development of oil on my allotment which came late in life, no living relative at any time manifested any interest in me or in my welfare whatsoever and such aid and assistance as I received in

early life came from those who were not bound to me by ties of blood or otherwise. Since my wealth has become so great and has attracted so much attention, certain persons who until that time were to all intents and purposes, strangers to me, have from time to time asserted a relationship with me and have attempted to establish themselves with me on a frindly basis.

Indeed, I have been reliably informed that some of these persons claiming relationship have already made contracts on a 50% basis with attorneys for the purpose of establishing a right in my estate upon my death. Whatever legal rights these persons may have when I die, I wish to state now that they have no moral claim upon me nor upon my estate and I here and now repudiate them one and all and denounce them as being prompted only by an avaricious desire to participate in my estate upon my death.

I have given to my beloved wife, Anna Laura Barnett, a substantial part of my estate. I am doing this for two rea- [fol. 24] sons: First, because since by marriage to her she has conducted herself toward me in a manner which is wholly commendable and above reproach. She has shown to me every consideration and through her, I have learned in a measure, to enjoy the wealth which is mine. From an environment of degradation in which I lived prior to my marriage with her, she has taken me against the most powerful and persistent opposition and has placed me in a comfortable home with pleasant surroundings and living conditions somewhat in keeping with my wealth. For all of this I am deeply appreciative and I feel that in making this gift to her, I am but doing that which every consideration of justice and equity require me to do.

Furthermore, I have reason to believe that upon my death those persons who now claim to be related to me and who will doubtless claim a part of my estate, are now planning to attack the right of my wife to any part of my property. In view of her conduct as my wife and the faithful performance of her duties as such, I feel that I should do no less than to protect her against the inconvenience and uncertainty of such a situation by endowing her with a suitable sum sufficient to her needs, so that whatever may occur after I am gone, she will be amply provided for.

To the end that these gifts may be consummated, I respectfully request the approval of the Secretary of the Interior

thereto and further request that all details in connection therewith be supervised and attended to by the proper officers of the Interior Department to the end that both the gifts and my future income and the welfare of my wife may be adequately protected and my wishes in regard thereto be carried out in full.

Respectfully submitted.

(His right thumb mark.) Jackson Barnett.

Witnesses: A. J. Ward, Creek National Attorney.

I, the undersigned, Anna Laura Barnett, the lawful wife of Jackson Barnett, hereby consents and agrees to the gifts made by Jackson Barnett as herein set forth. In this connection, I wish to state that as no part of any consideration for the gifts herein made to me, but to further assure a safe maintenance for my beloved husband, Jackson Barnett, my [fol. 25] daughter, Maxine Sturgess, and myself, I am placing in an irrevocable trust, $200,000, by the terms of which an annual income of approximately $8,000.00 is provided, which insures our support if the unfortunate event should come to pass that all other sources of income should fail. The principal sum of $200,000 cannot be diminished during the lifetime of Jackson Barnett. I am submitting to you said trust agreement, and as an act of courtesy and kindness to me, I respectfully request that you and the proper officers of the Interior Department pass upon such trust as to its legality.

Dated at Washington, D. C., this 15th day of December, 1922.

(Sgd.) Anna Laura Barnett.

EXHIBIT B TO AMENDED BILL OF COMPLAINT

Office of National Attorney for Creek Nation, Muskogee, Oklahoma

December 16, 1922.

The Commissioner of Indian Affairs.

SIR: There has been submitted to me for consideration, a communication signed by Jackson Barnett, a Creek In-

dian citizen, which is enclosed herewith, wherein Jackson Barnett undertakes to make certain gifts of that part of his estate which is in the form of Liberty Bonds and cash in substantially the following manner:

1. To his wife, Anna Laura Barnett, $550,000 without condition. On her part, however, his wife voluntarily agrees to set aside in a trust fund the sum of $200,000 the income from which shall be paid to Jackson Barnett during his lifetime to the extent of $7,500, such arrangement to be approved by the Secretary of the Interior.

2. To the American Baptist Home Mission Society of New York, Liberty Bonds in the sum of $550,000, to be held by said society as an endowment fund, the income from which is to be used for Bacone College and Murrow Indian Orphans' Home at Muskogee, Oklahoma. In consideration of this gift said society is to pay to Jackson Barnett during his life time through the Department as long as he is a restricted Indian and to him afterward, $20,000 annually, suitable guarantees to be furnished by said society.

[fol. 26] The approval of the Secretary of the Interior to these gifts is requested by Jackson Barnett and he also requests that the proper officers of the Interior Department attend to the details of the transaction to the end that the Indian be protected and the gift consummated in accordance with the terms of the donation.

The case of Jackson Barnett is so well known in the Interior Department that it may seem somewhat gratuitous to attempt any statement of its history. However, the proposed disposition of the major portion of this vast estate is so far out of the ordinary as to call for some explanation of it and in attempting this it may be found necessary to reiterate certain details with which the officials of the Department are already familiar.

Jackson Barnett is enrolled as a full-blood Creek Indian and at the date of his enrollment in 1902 as shown by the approved rolls, he was 48 years old which would make him now 68 years old. From such information as I have been able to get concerning his early life, he became an orphan when very young and lived with different families from time to time until he arrived at maturity. He is a typical

full-blood Indian and is possessed of all the inclinations and characteristics which are usually present in that class of people. When allotments of tribal land were made, he with numerous other full-blood Indians, opposed the distribution of tribal property and refused to select an allotment for himself. Under the powers granted by the treaty he was arbitrarily allotted 160 acres of land, which at that time was of little value. So little interest did Jackson Barnett take in this land that until a year or so ago, he never saw it. In 1913 oil was discovered in the vicinity of this land and there was developed what has since been known as the Cushing pool, perhaps the largest pool of oil which has been discovered in America.

About this time Jackson Barnett who had been living practically alone in the woods near Henryetta, Oklahoma, was brought into the probate court of Okmulgee County and by that court declared incompetent and a guardian was appointed over his person and estate. Almost immediately thereafter, an oil and gas lease was executed by the guardian under orders of court and approved by the Secretary of the Interior. Under this lease development began and the production of oil soon created a fund in the hands of the Department of enormous proportions. For a considerable time it was the practice of the Department to pay over to the guardian a substantial part of the income as it was received and the guardian in turn made such investments as were approved by the court. At a later date this [fol. 27] practice was stopped and during the late war the fund was used in the purchase of Liberty Bonds to the extent of over $1,000,000, which bonds are now in possession of the Secretary of the Interior.

In the meantime, notwithstanding the fact that Jackson Barnett's income was sufficient to support him in luxury, the income which he actually received from the guardian was very small and he lived in exactly the same style that he lived before he acquired great wealth. The guardian apparently made no attempt to change his living conditions and in fact, took the position that having been accustomed to a simple way of living, there was no occasion to change the situation because of a large income. This condition continued until about three years ago when the present wife of Jackson Barnett, against the wishes of the guardian

and apparently in pursuance of a preconceived plan and doubtless for mercenary purposes only, took him out of the State of Oklahoma into Kansas where they were married.

The attitude of the Interior Department toward this marriage as a matter of record and of history. Every effort was made to separate Barnett and his wife, and some $50,000 or $60,000 of his money was spent for that purpose, all under the supervision and with the sanction of the Interior Department. In keeping with this attitude the allowance to him and his wife was kept down to $500 per month and repeated requests of both Jackson and his wife for the purchase of a suitable home in some locality of their choosing were ignored, both by the Department and the guardian.

Since the marriage of Jackson and his wife, her conduct has been above reproach and she has done all that any woman could reasonably be expected to do to advance his interests and comfort. The records of your office show that prior to her marriage her reputation was exceedingly bad, and there can be no doubt of the fact that she was an adventuress of a most dangerous type. It may be said also, with certainty, that if Jackson Barnett had not been wealthy she would not have married him, or otherwise interested in him. Regardless of these facts, however, as the lawful wife of Jackson Barnett, she has apparently put herself on an entirely different plane and has diligently and studiously avoided any appearance of evil and has conducted herself in a manner so wholly commendable as to lead to the hope that she may have a sincere purpose to reform. In any event, for three years she has made good as his wife and there is no legal or moral ground on which the recognition of this fact could be denied.

[fol. 28] At the time of the marriage and prior thereto, Jackson Barnett lived in a very ordinary small house in the woods, seven or eight miles from Henryetta, where he received no attention and enjoyed none of the comforts of life. He was ragged, unkept, ill-fed and slovenly in his habits and appearance. So far as I have been able to discover, the guardian took no interest whatever in the personal welfare of this Indian, doling out to him small sums of money from time to time, such as he would a child and apparently treating his needs as of no consequence. Since his marriage he has improved in his personal habits and

appearance, wears good clothes, lives in a comfortable home, is learning to enjoy the things of life which his money will buy and is so much improved in every way that it is not difficult to overlook any short-comings of his wife when one contemplates that the change has been brought about through her efforts. In spite of all predictions to the contrary, the change has made Jackson Barnett a much happier man and I firmly believe it has prolonged his life.

The cost of administering the estate of Jackson Barnett through the probate court has been considerably in excess of what it should have been under normal conditions. The fight which was made to annul the marriage cost the estate a considerable sum in attorneys' fees and since that time the guardian has presented to me a petition and order approved by the County Court, authorizing a payment to him and his attorney, jointly, as fees $6,000 per annum, payable monthly. This payment, however, has not been made out of any funds in the hands of the Department. At the date of the last annual report, there was something over $4,000 in the hands of the guardian and nothing has been paid to him since that time, except for a time monthly allowances and special cash payments, which were immediately turned over to Jackson Barnett.

The condition of guardianship matters in the Five Civilized Tribes as they relate to the Indians is well known to the Department. An Indian may be able to care for himself during the greater part of a long life, but immediately upon the acquisition of wealth in any considerable quantity, he becomes incompetent and is hauled into court and a guardian appointed over his person and estate. From that time forward the court costs, attorneys' fees, guardian's fees and other expenses incidental to the management of his estate becomes a magnet which attracts a certain element which is unfortunately always present in Oklahoma and ready to receive such emoluments, lawful or otherwise, as may be extorted from these large estates.

[fo. 29] I make no charge that there has been any misconduct or mismanagement on the part of the guardian of Jackson Barnett nor that there has been any unprofessional conduct on the part of his attorney, but I do say that in view of the fact that practically this entire estate is restricted property under the control of the Department which cannot

be touched except with the approval and sanction of the Department, there appears to be no necessity nor occasion for the intervention of a guardian and that so far as I have been able to observe in this case, such intervention has resulted only in added expenses to the estate.

With reference to the allowance for fees for the guardian and his attorney, I have been told personally by the attorney on more than one occasion that if the Department does not see fit to allow such reasonable fees as said attorney claims to be earned, an open account will be kept of such fees and charges made thereon, and upon the death of Jackson Barnett when his property becomes unrestricted and no longer under the control of the Department, a claim will be filed with the administrator of the estate for such fees, which presumably considering past experiences of this kind will be allowed by the County Court. We thus have a situation where it seems probable that unless some disposition is made of this estate before Jackson Barnett dies or at least the major portion of it, it will be subject to encroachments and dissipation by the methods indicated and in the end the benefits which any Indian will receive from it will indeed, be small.

Furthermore, I have had inquiries from various persons who seek information as to who may be the heirs of this Indian when he dies. I have been told by one resident of Oklahoma that he has contracts on a 50% basis from two or three Indians who will claim to be heirs of Jackson Barnett upon his death and who will present this claim through the agent thus employed. I have no doubt, there are others who have similar contracts.

I am also convinced that the persons who will claim to be heirs, and possibly the guardian or administrator upon the death of Barnett will poin forces to defeat the claim of his wife to any part of his estate. I am frank to say that I do not feel much concerned about her interest to this estate but I do feel some concern about having this estate tied up in litigation for years with the ultimate possibility of its being dissipated among a lot of people who are interesting themselves in the matter only for what they may realize out of it and have no moral or legal claim on the estate.

[fol. 30] The Indians of the Five Civilized Tribes have been unfortunate in that so large a proportion of their

estates have been the object of such practices with the result that the Indians receive no benefits and are the victims of the unscrupulous. If the Department can do anything to avoid a situation of this kind I feel that a long stride will have been taken toward defeating a reprehensible practice.

The school and orphans' home to which a large part of this fund will go as an endowment, is an institution which is devoted entirely to Indians, and is the only institution of its kind within reach of Indians in Oklahoma, which by reason of its equipment, location and supervision in any degree, meets the requirements of the Indians. Its affairs are administered by the American Baptist Home Mission Society of New York, an institution which has a record of 90 years behind it which has now in endowment funds something over $10,000,000 which has a business organization which insures the proper administration of any funds intrusted to it and which is in a position to make suitable guaranties both of the administration of the fund and of the income it is proposed shall be paid to Jackson Barnett during his lifetime.

The school, while administered by a Baptist institution, makes no denominational requirements of its students; the only qualification which they must have being that they must be Indians. The orphanage is practically a part of the school and is managed by the same society and entrance requirements are as liberal as are those of the school. There are now somewhere in the neighborhood of 100 Indians in this place who are also receiving their education at the college, the buildings and grounds all being in one inclosure. The school has a schedule of fees which are required to be paid by those Indians who are able to pay, but there are many non-paying students and orphans and so far as the capacity of the school and orphange will permit, children are taken in regardless of their ability to pay.

Since 1917, the school has been under the immediate supervision of Dr. B. D. Weeks, who is especially qualified for this work and is enthusiastically devoted to it. He has done more to advance the interests of the school and orphanage than any of his predecessors and under his man-

agement it is rapidly becoming an institution of real merit and one which can be favorably considered in a matter of this kind with the utmost assurance.

To carry out the terms of the gift and to insure to Jackson Barnett the income of $20,000 per year for life, the [fol. 31] American Baptist Home Mission Society will execute a declaration of trust in the form herewith submitted and in addition thereto will enter into a contract with the Equitable Trust Company of New York whereby said funds will be held in trust by said company and the income paid to Jackson Barnett or to the superintendent for the Five Civilized Tribes while Jackson Barnett is a restricted Indian, the form of such agreement being enclosed herewith. This agreement not only insures the payment of this income as indicated but provides further that any attempted assignment of the income shall be void and shall not delay or suspend any payment thereof and that regardless of any appointment of any guardian of either the person or the estate of Jackson Barnett, said income shall be paid to him or to the superintendent as the case may be.

I am enclosing herewith a printed copy of the charter and by-laws of the American Baptist Home Mission Society together with a list of the officers, members of the board and committees: also a financial statement of said institution for the years 1921 and 1922.

The Equitable Trust Company of New York is an institution of nation-wide repute and its standing is such that there can be no question of the fufillment of any contract it enters into.

Mrs. Barnett on her own motion has consented in writing, to the gifts which are proposed to be made and as a further surety to Jackson Barnett she has voluntarily agreed to set aside the sum of $200,000 in trust, the income of which shall be paid to Jackson Barnett during his lifetime, with certain provisions for a division of said income between Jackson and her daughter, Maxine Sturgess, in the event of Mrs. Barnett's death prior to the death of Jackson Barnett. There are certain other details in connection with this trust that are of interest to Mrs. Barnett and her daughter which need not be elaborated on here, but so far as said trust estate effects the interest of Jackson Barnett,

he will be amply protected with an income more than sufficient for his needs as long as he lives. The terms of said trust are shown by copy of form enclosed herewith.

The income from the society and the trust fund, last mentioned, will give to Jackson Barnett as long as he lives independent of any other consideration the total of approximately $30,000 per year. In addition to this his allotment is now producing oil and during the past three months the income from this production has averaged more than $1,500 per month. Upon the distribution of the gifts there will [fol. 32] still be a cash balance to his credit in the Department of $40,000 or more. In addition to this property and income mentioned, there is in the neighborhood of $50,000 in farm loans which will be paid into the Department eventually and which now produce an annual revenue of $4,000 or $5,000 per year.

From the foregoing it will be seen that the distribution of that part of his estate which is necessary to consummate these gifts when made, will with the conditions attached, still leave Jackson Barnett with an annual income not greatly less than that which he is now receiving, so that for all practical purposes, the making of these gifts will not in any manner impoverish him but will serve the purpose of so placing his estate that it will be beyond the reach of those who would make encroachments upon it after he dies.

The making of these gifts in accordance with the plan herein outlined should be approved, as I view the matter and from any standpoint can be thoroughly justified. The disposition of estates during the lifetime of the owner under ordinary circumstances is not an unusual thing nor is there anything about such a course as should call for any unfavorable comment, if gifts are reasonable, just and for a worthy purpose and in keeping with the circumstances and conditions of the estate and of the individual making them. I see no reason why an Indian should not be permitted by the Department to do what, under similar circumstances, would be thoroughly approved if done by a white man. The proposed gifts viewed from any angle inevitably commend themselves as being fair, sensible and business like. If they are permitted to be made the donation to the Indian school will be of lasting and permanent benefit.

to the Indian people. Indeed, no better purpose could be served than the creation of a perpetual fund for the education of the Indians. If this gift is permitted, it will bear the distinctive mark of the first large Indian estate in Oklahoma to be conserved for a worthy purpose for the benefit of the Indians as against a long and dubious record of Indian estates dissipated, squandered and diverted from any beneficial use whatsoever, except to those unscrupulous persons who make it their business to prey upon the helpless and improvident Indian and who unfortunately have in the past, met with a large measure of success. In my opinion, this administration can build no greater or more lasting monument to itself than to approve this gift and thus announce to the world that it is in hearty sympathy with any worthy purpose which has for its object the uplifting of the Indian from his present unfortunate state. It is with sincere hope that the Department may concur in this [fol. 33] view that I recommend the approval of these gifts and the necessary authority to consummate them.

Respectfully submitted.

A. J. Ward.

Respectfully submitted.

A. J. Ward.

January 29, 1923.

I hereby concur in the above recommendation made by A. J. Ward, Creek Tribal Attorney, that the above mentioned donations be approved and that appropriate steps be taken to carry same into effect.

Respectfully, Victor M. Locke, Jr., Superintendent for the Five Civilized Tribes.

EXHIBIT C TO AMENDED BILL OF COMPLAINT

Washington, D. C., January 30, 1923.

Hon. Albert B. Fall, Secretary of the Interior.

SIR: Referring to my letter addressed to you under date of December 15, 1922, whereby, subject to your approval,

I give $550,000 to the American Baptist Home Mission Society, of New York, as an endowment fund, income from which is to be used for the benefit of Bacone College and Murrow Orphans' Home, located at Bacone, Oklahoma, and an additional sum of $550,000 to my wife, Anna Laura Barnett, said gifts to be made and the details concerning the same to be attended to by the proper officers of your Department, I have been advised by Mr. A. J. Ward, Creek National Attorney, of the plan which has been agreed upon whereby the gift to the Society above named and the payment to me of an income not exceeding $20,000 per year as long as I shall live, has been secured by an agreement between said Society and the Equitable Trust Company of New York, under the terms of which certain charges are to be made for the services of said Trust Company and for attorneys' fees and certain contingencies, and the same has been fully explained to me.

I have also been advised concerning the proposed declaration of trust to be executed by said Society, which, in [fol. 34] conjunction with the agreement between the Society and the Equitable Trust Company, constitutes a contract fixing the terms and conditions of the gifts, the disposition of the income therefrom, the charges which may be made against the same, and other matters incidental thereto.

This is to advise you that notwithstanding the apparent discrepancies between the plan which has been adopted by you as outlined above and the terms of the gifts as set forth in my letter of December 15, 1922, I regard the plan which has been adopt-d, and which it is proposed to carry out, as a substantial compliance with my wishes in the matter, and hereby consent to and approve the same in all particulars.

Respectfully, Jackson his X mark Barnett. His right thumb mark.

Witnesses: A. J. Ward, Creek National Attorney.

[File endorsement omitted.]

In United States District Court

Motion to Dismiss—Filed Sept. 29, 1928

Comes now the defendant, Marshall L. Mott, and moves this court to dismiss the amended bill of complaint herein filed by the Assistant Attorney General of the United States and the United States District Attorney for the Northern District of Oklahoma, for the reasons and upon the grounds, as follows, to-wit:

1. That said amended bill of complaint does not set forth in due form allegations showing a cause of action on the part of the United States of America against the defendant, either at law or in equity.

2. That said amended bill does not state allegations which entitle the United States to the relief prayed for therein.

3. That said amended bill aforesaid, violates paragraph 2 of Rule 25, of the Rules of Equity, in that it does not [fol. 35] allege, in short and plain statement, the facts upon which the jurisdiction of this court depends.

4. That said amended bill, aforesaid, violates paragraph 3 of Equity Rule 25, in that the same does not, in short and simple language, allege the ultimate facts upon which the plaintiff asks relief.

5. That said amended bill, aforesaid, in violation of Paragraph 3 of Equity Rule 25, alleges and states what purports to be the evidence upon which said bill is based.

6. That said amended bill, aforesaid, fails to allege and show authority of law for the Attorney General of the United States, his assistants, and the United States District Attorney for the Northern District of Oklahoma, to bring said bill into this court.

7. That said amended bill, aforesaid, violates the established and fundamental rules of pleading, in that the original bill was and is so fatally defective as not to support a decree thereon, and the amendment thereof cannot be allowed.

8. That said amended bill, aforesaid, violates the established and fundamental rules of pleading, in that the same attempts to change the form and nature of the action attempted to be pleaded and set forth in the original bill.

9. That the amended bill, aforesaid, attempts to plead a cause of action on behalf of the United States of America, for the review and cancellation of a judgment and official act of a former Secretary of Interior, done in the exercise of his official discretion, authority to do which was vested in him by Congress, and attempts to charge that said former Secretary of the Interior was fraudulently deceived by certain persons conspiring together, including the defendant herein; that neither the said former Secretary of Interior nor the present Secretary of Interior, as exhibited by said bills, has made a representation to the Attorney General of the United States, or to any of his Assistants, that said officer, aforesaid, was so deceived, nor has any request been made by said former Secretary of Interior, nor by the present Secretary, asking and requesting the Attorney General of the United States to institute said suit, in the absence of which request the said Attorney General is without authority to bring this suit.

10. That, as exhibited by the original bill herein filed, and the exhibits thereto attached, and all of the matters set up therein, said suit was brought and is now being prosecuted by the Attorney General of the United States, through his assistants, contrary to the wishes, and over [fol. 36] the protest of the present Secretary of the Interior, in which circumstances the United States District Attorney for the Northern District of Oklahoma, Mr. John M. Goldesberry, and the Special Assistants to the Attorney General of the United States whose names appear upon said original and amended bills, have no authority in law to prosecute this action in the name of, and on behalf of, the United States.

M. L. Mott, Defendant, by Chas. B. Rogers, His Attorney, Tulsa, Oklahoma.

[File endorsement omitted.]

In United States District Court

Supplemental Motion to Dismiss—Filed Oct. 10, 1928

Comes now the defendant, Marshall L. Mott, and as an additional and supplemental ground therefor, and without waiving any of the grounds set forth in his previous motion to dismiss the same, now moves the court to dismiss the amended bill of complaint herein filed by the Assistant Attorneys General of the United States and the United States District Attorney for the Northern District of Oklahoma, for that:

Heretofore and in the year 1926, the Attorney General of the United States, acting by and through the United States District Attorney for the Southern District of New York, and his Assistant Attorneys General, B. M. Parmenter and Special Assistants, Nat M. Lacy and Chas. B. Selby, filed a petition in intervention in a certain action then pending in said court entitled "Jackson Barnett, Incompetent, by Elmer S. Bailey, Prochein ami, Plaintiff, vs. Equitable Trust Company, and The American Baptist Home Mission Society, Defendants E 31—91," in which petition of intervention the said officials of the Department of Justice set forth in detail allegations of fact upon which said officials of the Department of Justice prayed relief of cancellation and avoidance of the Trust agreement, referred to in the amended bill herein, as having been executed by the said parties and the avoidance of the gift to [fol. 37] the American Baptist Home Mission Society, referred to in the amended bill herein as having been made by Jackson Barnett, with the approval of the Secretary of Interior and Commissioner of Indian Affairs; the same being with reference to and an attack upon the same official act which is now referred to and assailed in said amended bill, in which petition in intervention it was charged, after a recital in elaborate detail of every fact referred to in the amended bill herein, preceding the act of approval by the Secretary of Interior (referring to the action of said Department officials in the consideration and approval of the request of Jackson Barnett to make said gift to said Anna Laura Barnett and to the American Baptist Home Mission Society, as referred to in the amended bill herein) that:

"All thereof being done by the said named parties and Departmental officers with full knowledge of all the facts, matters and things hereinbefore alleged."

That, theretofore, and to-wit: in the year 1926, the said officials in the Department of Justice above named and the United States District Attorney for the District of Columbia, filed and caused to be filed in the Supreme Court of the District of Columbia, in an action therein pending entitled "Jackson Barnett, Incompetent, by Elmer S. Bailey, Prochein ami, Plaintiff, vs. Riggs National Bank, a Corporation, Anna Laura Barnett, and Maxine Sturgis, Defendants. No. —," a petition for leave to file an intervention therein, in which application for leave to file said intervention there was charged substantially each and every allegation set forth in the intervention filed in the New York case, and in which application it was made to appear, over the signature of said officials, aforesaid, after reciting all of the matters and things alleged, as preceeding the act of the Secretary in reference to the approval of the request of Jackson Barnett to make a gift to Anna Laura Barnett and the American Baptist Home Mission Society, detailed and set forth in the amended bill herein, and in referring to the approval by said officers of said request and the transfer of the funds and bonds referred to—that said action of said officers was:

"* * * all thereof being done by the said named parties and Department officers with full knowledge of all the facts, matters and things hereinbefore alleged."

That similar allegations were made by said officers of the Department of Justice having charge thereof in the [fol. 38] suit in the United States District Court for the Southern District of California entitled "United States of America, Plaintiff, vs. Anna Laura Barnett, Maxine Sturgis; et al., Defendants," and a similar charge therein made, that the action of the Secretary of the Interior in the approval of the request of Jackson Barnett was done with full knowledge of all the facts in said bill detailed.

That a similar intervention was sought to be filed in

1926 by said officers of the Department of Justice in the United States Court for the District of Kansas, entitled "Elmer S. Bailey, Guardian of Jackson Barnett, an Incompetent, Plaintiff, vs. Harold C. McGugin, Walter S. Keith, et al., Defendants," in which intervention similar allegations were made, and in which it was alleged, speaking of the approval by the Secretary of the Interior and Commissioner of Indian Affairs of said gift and trust agreements as are alleged and set forth in the amended bill herein, that:

"* * * all thereof being done by the said named parties and Department officers, with full knowledge of all the facts, matters and things hereinbefore alleged."

That the original bill herein contains full and complete detail of fact showing clearly and conclusively that the action of the Secretary of the Interior and the Commissioner of Indian Affairs in respect to the gift referred to in the bill, to Anna Laura Barnett and the trust agreement, referred to in the bill, created by said Anna Laura Barnett and Jackson Barnett, with the approval of the said Secretary of the Interior, were all done by said Secretary of Interior and Commissioner of Indian Affairs with full knowledge of all the facts, matters and things charged in said original bill.

That a similar original bill to the one filed in this court in this cause was filed in the District Court of Kansas, on April 11, 1928, in an action against Harold C. McGugin, et al.; and that a similar original bill was filed in the United States District Court for the Southern District of California, on April 11, 1928, against Anna Laura Barnett, Maxine Sturgis and Leslie R. Hewitt, legal guardian of Jackson Barnett, in which similar allegations were made, and that a similar original bill was filed in the Supreme Court of the District of Columbia on the 11th day of April, 1928, against the Riggs National Bank, Anna Laura Barnett and [fol. 39] Maxine Sturgis; in all of which original bills similar charges were made, and all of which show conclusively upon their allegations that the Secretary of the Interior and Commissioner of Indian Affairs, when they approved the gift of Jackson Barnett and the trust agreement set

out and referred to in said original bills, did so with full knowledge of all the facts, matters and things so charged in said original bill.

That, of said suits, the one pending in the Southern District of New York has been tried, and evidence introduced, and the testimony offered in said action is a matter of record. That at the trial of the said New York case, the United States Attorney General, acting through the United States District Attorney, for the Southern District of New York, at the beginning of said trial, in open court, with leave of court, struck from the bill in said cause so filed, all charges or implications of fraud or corrupt practice on the part of the Secretary of the Interior, and all of the Department officials named and referred to therein, and withdrew from said bill in said cause all charges of fraud and implication of fraud against said officers in connection with the approval of the gift of said Jackson Barnett to the American Baptist Home Mission Society, and the transfer of the money and bonds to the Equitable Trust Company of New York, upon said request.

That, at the New York trial by the record of said cause, it was not charged, either in the bill or outside the bill that any official of the Department of Interior was deceived by anyone connected with the transaction complained of. That the testimony so taken shows conclusively that there was not only "no deception of said officials," but that there was—no attempt to deceive said officials, and no intention to deceive said officials, but that, on the contrary, said Department officials having charge of said transaction in the Department of the Interior, testified that they had full knowledge of all of the facts and acted thereon, and, should the same matter come before them on the same facts, they would again render the same judgment and approve the transaction.

That the evidence introduced at the New York trial, and which is now a matter of record in that cause, shows, as to the relation of the then Secretary of the Interior, Albert B. Fall, with the same transaction, as follows:

That the Honorable Charles H. Burke was Commissioner of Indian Affairs; that the matter of the negotiation of the gift of Jackson Barnett, at the suggestion of Commissioner Burke, was officially referred to A. J. Ward, Creek Tribal Attorney; that the Honorable E. B. Goodwin was, at the

[fol. 40] time of said negotiations, and the approval thereof, an assistant to the Honorable Albert B. Fall, the then Secretary of the Interior; that the Commissioner of Indian Affairs and the Assistant Secretary of Interior, F. M. Goodwin, aforesaid, conducted all of the negotiations of said matter with the Secretary of the Interior, and through them, and only through them, did Secretary Fall have any relation to the matter, and from them he acquired all the information which he possessed thereon, except as shown by the written recommendation made by A. J. Ward.

The undisputed testimony in that record shows that the Commissioner of Indian Affairs and the Assistant Secretary, Mr. Goodwin, both discussed the Barnett gift, and informed Secretary Fall substantially all of the facts set forth and charged in the original bill, insofar as it pertained to the gift of Jackon Barnett to his wife, Anna Laura Barnett; and further, the undisputed testimony of Mr. Goodwin was that he personally discussed the matter with Secretary Fall, after conferring with A. J. Ward, and after a conference with Jackson Barnett, and that he imparted to the Secretary the material facts connected with the gift of Jackson Barnett to Anna Laura Barnett, and the American Baptist Home Mission Society.

That, under the law and regulations of the Department of Interior, the Commissioner of Indian Affairs has jurisdiction and authority over the administration of Indian matters of the Five Civilized Tribes, subject to the approval of the Secretary, and that the Commissioner of Indian Affairs, Mr. Burke, in the Barnett matter, had full knowledge of all of the facts, and over his own signature recommended to Secretary Fall the approval by him of the gifts and trust agreements, aforesaid.

That, from the undisputed testimony of the record, A. J. Ward, at no time communicated with the Secretary of the Interior, save and only through the written memorandum accompanying the request of Jackson Barnett, in which the said A. J. Ward set forth substantially a history of the Jackson Barnett matter, conformable to and harmonious with the testimony offered in the New York case, much of which recital had been a matter of record in the Department of the Interior prior to the preparation of said memorandum.

That the first bills heretofore filed on behalf of the Department of Justice assailing the validity of the gifts aforesaid, were upon the theory that the action of the Secretary of the Interior in approving the donations was unauthor- [fol. 41] ized and void, because, as alleged, Jackson Barnett was an incompetent, and under the jurisdiction of the probate court of Okmulgee County, Oklahoma, and that said court had not granted its approval thereof.

That it was alleged in the first bills filed by the Department of Justice, that one Elmer S. Bailey was the duly authorized legal guardian of Jackson Barnett and his property, and that guardianship proceedings were commenced in 1912 by the appointment of one Carl J. O'Hornett, as guardian of the person and estate of Jackson Barnett in Okmulgee County, Oklahoma; that it was further charged in said first bills that the Commissioner of Indian Affairs and the Secretary of Interior, for the purpose of enabling them, in harmony with the regulations of the Secretary relative to the estates of Indians of the Five Civilized Tribes, to approve said donations and transfer said funds—wrongfully and unlawfully caused the amendment of the theretofore existing regulations, which amended regulations were approved by the Secretary of the Interior on October 7, 1922, and under which amended regulations the Secretary might disburse said funds, as requested by Jackson Barnett.

That on October 20, 1926, the Attorney General of the United States, over his own signature, approved an opinion written by Mr. George P. Barse, an Assistant to the Attorney General, in which opinion it was expressly stated that the Secretary of the Interior had the authority and power to make the amended regulation referred to, and that the County Courts of Oklahoma had no jurisdiction or authority over the estates and money of restricted Indians—the Jackson Barnett matter being directly under consideration. That upon said opinion, and under the direction of the Attorney General, aforesaid, all the allegations contained in the first bill, thus filed in the New York case, were stricken, insofar as they referred to or charged that the Secretary was without authority to make said amended regulation, and the allegation that the gifts aforesaid were invalid by reason of the failure of the County Court of Okmulgee County to approve the same.

That on November 30, 1926, and after the trial of the New York case had closed, but before the same had been briefed and submitted, the Supreme Court of the State of Oklahoma, in a cause entitled In re Appeal of Jackson Barnett, No. 17061, held and decreed that the appointment of Carl J. O'Hornett, in 1912, as legal guardian of the person and estate of Jackson Barnett, was void, and without any legal [fol. 42] effect, and that the appointment of Elmer S. Bailey as successor to said Carl J. O'Hornett was likewise void—the effect of said decision being that Jackson Barnett was not then, nor had he ever been at any time theretofore, under guardianship, as alleged and claimed by said Deprtment of Justice.

That, after the determination by the Attorney General, in 1926, that the County Courts of Oklahoma had no jurisdiction or authority over the restricted moneys of any full-blood member of the Five Civilized Tribes, and after the withdrawal from the New York case of all implications of fraud or wrong doing on the part of said officials, as had been charged in said first bills, said Department officials now representing the Department of Justice in the Barnett case, and in this case, changed their theory of the case, and proceeded upon the theory that Jackson Barnett was a mental incompetent, without sufficient understanding to enable him to initiate a gift of his property, and that, by reason thereof, the approval of the Secretary of the Interior was void and without legal effect.

The New York case was argued, briefed and tried upon that theory, and Judge John C. Knox's decision in that case reflects that sole and only issue before him.

That at no stage of the prosecution of the various suits hereinbefore mentioned and referred to until this amended bill was filed herein has there been any intimation or charge or claim that the Secretary of the Interior, Mr. Fall, was deceived by any person, but on the contrary, throughout the entire litigation it was urged and claimed that the said Secretary acted with full knowledge of all the matters charged.

In view of all of these things, the defendant herein, Marshall L. Mott, claims that the filing and the further attempted prosecution of the amended bill in this cause is made in bad faith, and with an oppressive and wrongful intent and purpose.

Wherefore, this court should strike from its files said amended bill, on the ground that said amendment is not made in good faith, and for a lawful and just purpose, and that said order should be so entered dismissing said amended petition, in order to prevent injustice and wrong being perpetrated upon the defendant, and to prevent him from being put to unjust and unreasonable expense and trouble in defending against the said amended bill.

Marshall L. Mott, by Chas. B. Rogers, His Attorney.

[fol. 43] *Duly sworn to by Marshall L. Mott. Jurat omitted in printing.*

Leave granted to file. F. E. Kennamer, J.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER ON MOTION TO DISMISS—Filed Mar. 25, 1929

This cause coming on for hearing before the court upon motion of defendant to dismiss the amended bill of the plaintiff, and the United States, appearing by and through Charles B. Selby, Special Assistant to the Attorney General, suggesting to the court the probability that the Attorney eGneral of the United States will desire to file a substitute for the present pending amended bill, requests the court that the hearing on defendant's said pending motion be postponed to a later date. Thereupon, Charles B. Rogers, record counsel for defendant, Marshall L. Mott, in open court consenting that said matter be postponed to April 22, 1929, and the court thereupon orders that this cause be, and the same is hereby continued to April 22, 1929, to be heard at Oklahoma City, the United States to deliver a copy of its proposed amended, or substitute bill so desired to be filed, to the said Charles B. Rogers, not later than one week prior to the said 22nd day of April, 1929, and file its application for leave to file the original of said proposed

bill, with an attached copy thereof, with the clerk of this court.

Done in open court March 25, 1929.

John C. Pollock, Judge.

OK. Jno. M. Goldesberry, U. S. Attorney.

[File endorsement omitted.]

[fol. 44] IN THE UNITED STATES DISTRICT COURT

APPLICATION FOR LEAVE TO FILE SECOND AMENDED BILL OF COMPLAINT—Filed April 15, 1929

Comes now the United States, plaintiff in the above cause, by and through Charles B. Selby, Special Assistant to the Attorney General of the United States, and by direction of the said Attorney General of the United States, and moves this honorable court for an order granting leave to the United States to file an amended or substitute amended bill of complaint for the present pending amended bill of complaint, against which pending motions of the defendant are now directed, a true copy of which amended or substitute bill of complaint is hereto attached and made a part hereof, and in support of this application it is suggested and shown to the court that for a long time the United States has had similar causes pending in the federal courts of New York, Kansas, California and the District of Columbia, and has had under investigation the facts concerning the transaction set forth in the copy of the proposed bill hereto attached and sought to be filed, and but recently, and since the filing of the pending amended bill, has, through its Department of Justice, made further investigation into the transaction in said bills described, and forming the subject-matter of this and said companion suits, and has discovered other and further evidentiary matters not prior within the knowledge of said Department of Government and its officers, so far as relates to the defendant in this cause, and the coming of said matters into its hands, so far as relating to the defendant in the above cause is concerned, and after a further consideration of the law applicable to the facts averred as against the above named defendant, and relevant

to the issues tendered in said proposed bill as against defendant, which said matters require, in the judgment of the officers of the Department of Justice that the original of the attached copy hereto, be filed in the form in which the same now appears, in replacement of, and substitution for, said pending amended bill, against which pending motions of said defendant now stand directed.

Wherefore, the United States prays that the court by its order grant the United States leave to file said proposed amended or substitute bill in lieu of said pending amended bill, and second, that the court hear this application prior to the calling of the motion of defendant to dismiss the pending amended bill, and the alternative motion to strike portions thereof, and that upon a granting of this motion on behalf of the Government to file this substitute bill that [fol. 45] its order further provide that the same shall supersede the Government's present pending amended bill and defendant's said motions thereto.

The United States of America, by Charles B. Selby, Special Assistant to the Attorney General of the United States, duly assigned to this cause and record solicitor for the United States.

Duly sworn to by Charles B. Selby. Jurat omitted in printing.

IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF FILING OF APPLICATION TO FILE SECOND AMENDED BILL OF COMPLAINT

To Charles B. Rogers, record solicitor for above-named defendant in above entitled and numbered cause:

Pursuant to order of Honorable John C. Pollock, United States Judge, made in the above entitled cause, in the federal court room at Tulsa, Oklahoma, within the above entitled Judicial District, on the 25th day of March, 1929, requiring service of a copy of the proposed amended or

substitute bill of complaint sought to be filed by the United States as plaintiff in the above entitled cause, which order [fol. 46] also directed the filing of an application with the clerk of said court for the filing of said proposed amended or substitute bill, the same to be heard by the said Honorable John C. Pollock at Oklahoma City, Oklahoma, on April 22, 1929, I hereby attach to this notice, and make the same a part hereof, a copy of said proposed amended bill so sought to be filed, together with a copy of the application so to be made to said court at said time, which said application you are advised is to come on for consideration in the federal court room in Oklahoma City, within the Western District of Oklahoma, on said last mentioned date, at the hour of 10:00 o'clock A. M. or as soon thereafter as said judge may hear the same.

Very respectfully, Charles B. Selby, Special Assistant to the Attorney General of the United States.

IN UNITED STATES DISTRICT COURT

SECOND AMENDED COMPLAINT

Comes now the United States of America, with leave of court first had and obtained to file this, its second amended bill of complaint, all under authorization and direction of the Attorney General of the United States and at the request of the Secretary of the Interior, for its second amended bill of complaint herein, in substitution for its first amended bill of complaint against defendant, avers and alleges as follows:

That Jackson Barnett, hereinafter more particularly mentioned, is a duly enrolled full blood member of the Creek Indian Tribe, one of the Five Civilized Tribes of Oklahoma; that as such member of said Tribe there was duly allotted to him, in manner as provided by law, his proportionate share of the tribal lands of said Creek Tribe, which land so thereto allotted is located in what was originally the Indian Territory but now comprising a part of the State of Oklahoma, and which lands so thereto allotted were, prior to the time herein particularly complained of, duly and as in manner provided by law, conveyed to the said Jackson Barnett

in fee simple and in extinguishment of all prior reversionary interest of the United States therein, subject only to the restriction against the alienation thereof prior to April 26th, 1931, except upon the removal of the said restriction by the Secretary of the Interior; that the said Jackson Bar-
[fol. 47] nett ever since has been, and now is, the owner of said land; that said Jackson Barnett is now about the age of seventy-eight years, is without issue and at all times herein mentioned was, and now is, illiterate, mentally incompetent and wholly incapable of managing his own affairs, or of caring for his property and person and unable to appreciate or understand the nature, or extent of his property.

The United States further complaining avers that in 1912 one Carl J. O'Hornett, of Okmulgee County, Oklahoma, the county of the then residence of said Jackson Barnett, was by order of the County Court of said county and state, appointed guardian of the person and estate of the said Jackson Barnett, and until November 30th, 1926, the said O'Hornett, or his sucessor, Elmer S. Bailey, acted as such guardian, and during all of said time were respectively recognized and treated as such by the courts of Oklahoma, of the United States, by the Department of the Interior, by Barnett and his purported wife and by all parties mentioned in this amended bill of complaint and particularly by the defendant, Marshall L. Mott, on which last mentioned date the said appointment of the said O'Hornett, and of his successor, Bailey, as such guardian, was by the Supreme Court of Oklahoma held to be void.

The United States, further complaining, avers that in the said year 1912, and while the said O'Hornett was acting as such guardian, a departmental oil and gas lease of the land so allotted and conveyed to, and owned by the said Jackson Barnett, was executed by the said Jackson Barnett and the said Carl J. O'Hornett, as guardian aforesaid and approved by the said County Court and by the then Secretary of the Interior of the United States, in pursuance of the terms of which and of the regulations promulgated by the Secretary of the Interior, the royalties accruing from and payable upon the oil and gas removed from said land by the lessee were paid to the Superintendent of the said Five Civilized Tribes of Indians, or to his predecessor, offi-

cers of the United States in the said Department of the Interior and daly authorized to collect and receive the same, and which said royalties by said officers so received and accumulated in their custody were transmitted to the Secretary of the Interior and by him invested in Liberty bonds of the United States in the name of said Barnett and thereafter and until the times hereinafter more particularly complained of, were held therefor in the Treasury of the United States in the name of said Jackson Barnett, the face value of the principal amount of which, on February 1st, 1923, [fol. 48] was in the sum of One Million, One Hundred Fifty-six Thousand, Seven Hundred Fifty Dollars ($1,156,750.00).

The United States further avers that shortly before said last named date, Albert B. Fall, the then Secretary of the Interior, having through his said Department of the Interior requested of, and having received of said bonds the face principal of One Million One Hundred Thousand Dollars ($1,100,000.00) from the said Treasury of the United Sttaes, did, on or about said day and date, obtain and cause to be delivered to one A. J. Ward of said bonds so held in trust in the face value in the principal sum of Five Hundred Fifty Thousand Dollars ($550,000.00) for delivery and payment to the Equitable Trust Company a corporation of New York, which said bonds, so received by the said Ward, were, by the said Ward, thereupon delivered to the said Equitable Trust Company, as trustee, to be thereby held in trust pursuant to the terms of certain writings whereby said Equitable Trust Company agreed to hold said bonds so thereby received, as trustee and in trust and from the income of which to pay to the said Jackson Barnett the sum of Twenty Thousand Dollars ($20,000.00) yearly so long as he should live, and to devote the remainder of the said Jackson Barnett and all of the income thereof, during the lifetime of the said Jackson Barnett and all of the income thereafter to certain uses of the American Baptist Home Mission Society of New York, and the United States avers that at the same time, in conjunction with, and as a part of the same transaction of delivery of said bonds to the said Ward, the said Albert B. Fall authorized and caused to be delivered to one Anna Laura Barnett, the purported wife of the said Jackson Barnett, the remainder of said One Million One Hundred Thousand Dollars ($1,100,000.00) of

said bonds, to wit: in the face principal sum of Five Hundred Fifty Thousand Dollars ($550,000.00), which previously, as aforesaid, were held in trust in the Treasury of the United States in the name of the said Jackson Barnett, and which delivery of said bonds to the said Anna Laura Barnett was in pursuance of an agreement on her part to cause certain of said bonds of the face value in the principal sum of Two Hundred Thousand Dollars ($200,000.00) to be placed in trust in the Riggs National Bank of Washington, D. C., upon conditions that out of the income of said bonds so placed in trust the sum of Seven Thousand Five Hundred Dollars ($7,500.00) be paid yearly to the said Jackson Barnett as long as he should live, and the remainder of said income during the lifetime of said Jackson Barnett to be paid to the said Anna Laura Barnett and upon the death of said Jackson Barnett all of the said income and from time to time thereafter, various portions of the principal [fol. 49] thereof and of the body of the trust so created to be paid to the said Anna Laura Barnett or to her daughter Maxine Sturgis until the entire principal, or body of said trust should be so paid and become and remain the sole property of said Anna Laura Barnett of her said daughter. That of the remainder of said bonds so by the said Anna Laura Barnett received, the same were to become and be her sole, free and unrestricted property. That said agreement upon which bonds of the face value of Two Hundred Thousand Dollars ($200,000.00) principal sums were so delivered to said Anna Laura Barnett was performed and the same were accordingly placed in trust in said bank as trustee.

The United States further complaining avers that the accruing annual interest as provided in the said bonds so delivered to the said A. J. Ward and by him to said Equitable Trust Company and to the said Anna Laura Barnett and to the said Riggs National Bank on said 1st day of February, 1923, amounted to a sum in excess of Fifty Thousand Dollars ($50,000.00) and further avers that the said payment and delivery of all of said bonds as aforesaid, was wholly without consideration moving to or from any person.

The United States avers that at no time was Jackson Barnett able to read or write any language, or to understand elementary arithmetic, or to readily comprehend the Eng-

lish language, nor by reason of his mental infirmity was he able to appreciate the nature or amount of his property, or to realize the portions of it so disposed of and distributed, nor was he, at the times complained of, able to understand, and at no time since has understood, the terms and conditions upon which the said delivery of said bonds was made by the said Secretary of the Interior.

The United States avers that the said distribution and delivery of said bonds by the Secretary of the Interior was made and based upon a purported request in writing, bearing the thumb print signature of the said Jackson Barnett thereto, the nature, purpose, import and effect of which he, by reason of his mental infirmity, was wholly unable to comprehend and understand, and which he at all times since has been wholly unable to comprehend and understand, which writing was drawn and drafted by the said A. J. Ward, the then Creek National Attorney, which instrument, together with letters from the said Creek National Attorney and the Commissioner of Indian Affairs containing recommendations that the said Albert B. Fall, Secretary of the Interior, authorize and cause to be made the payments and deliveries of said bonds in accordance with the said thumb print in-
[fol. 50] strument of request of the said Jackson Barnett, were transmitted to the said Albert B. Fall, Secretary of the Interior. The United States avers that said letters of recommendation contained the statement that said Jackson Barnett had been adjudged an incompetent by said Okmulgee County Court and that a guardian has been appointed over the person and estate of the said Barnett and was then acting as such and further avers that upon receipt of said letters of recommendation the same were approved by the said Secretary of the Interior and the aforesaid payments and deliveries of said bonds were authorized and directed to be made by the said Secretary Albert B. Fall, indorsing upon the said letter of recommendation of the said Commissioner of Indian Affairs the word "Approved" together with the then date and his official signature.

The United States avers that at no time prior to the making of said payments and deliveries of said bonds was the said guardian informed thereof, nor had he information that the purported thumb print request of said Barnett had been executed, nor that the authorizing or making

of said payments and deliveries of said bonds was in contemplation by any person, and said payments and deliveries of said bonds were made wholly without his knowledge, and without knowledge of or notice to said Okmulgee County Court, and the United States avers that the said distribution and delivery of said bonds were not, and at no time have been for the benefit of Jackson Barnett, and that neither the said Albert B. Fall, Secretary of the Interior, nor any other officer or agent of the Government of the United States was at any time authorized by law to make said payments and deliveries of said bonds of the said Jackson Barnett for the purposes aforesaid, and that all of said acts of the said Secretary of the Interior, Albert B. Fall, and all other officers and agents of the United States participating in the said distribution and disposition of said bonds were without warrant and authority of law and the said distribution and disposition of said bonds in all respects was not only without warrant and authority of law but contrary to the purpose, intent and effect of the law in such case made and provided.

The United States further complaining avers that the said Anna Laura Barnett, immediately upon receipt of said bonds, as alleged, delivered One Hundred Fifty Thousand Dollars ($150,000.00) face principal thereof, to one Harold C. McGugin, who thereupon delivered Fifteen Thousand ($15,000.00) Dollars face principal thereof to the defendant, Marshall L. Mott. That the said Harold C. [fol. 51] McGugin and defendant Marshall L. Mott, prior to the receipt thereby of the said bonds so respectively received by them, as herein alleged, had actual knowldge of all of the facts, circumstances, matters and things recited and averred herein, and received said respectively designated bonds with full knowledge of the fact that the same had directly come to and into the hands of and through the said Anna Laura Barnett from the said Secretary of the Interior, Albert B. Fall, and the subordinates of his department in the manner hereinbefore alleged, and that the same were the property of Jackson Barnett and procured from oil royalties on oil taken from his said restricted lands and each well knew and for a long time had well known that the said Jackson Barnett was a

mental incompetent, and without mental capacity to make or to initiate the purported disposition and distribution of said bonds, and each thereof particularly at all times well knew and understood that the said bonds so thereby received were the property of said Jackson Barnett, subject to the trust character thereof in the United States therein through the Interior Department and the duty thereof to preserve, conserve and protect the same under the restrictions thereon imposed by Congress, and without consideration moving to or from any person on account of the said bonds so thereby respectively received.

The United States further avers that the defendant Marshall L. Mott has at all times retained the said bonds so by him received, or the converted form thereof, and at no time has accounted to the United States for any part thereof, but has refused and still refuses so to do.

The United States avers that it is without knowledge as to the denomination, number, description or series of the bonds so received by the said Marshall L. Mott as aforesaid and is therefore unable to more particularly described the same than as in this complaint set forth; nor is the United States informed or advised as to whether or not said defendant retains the specific and particular bonds so received by him, or whether or not he has converted the same into money, or other property, but does aver that the same by the terms thereof provided for interest thereon at the rate of four and one-half per cent (4½%).

The United States avers that it brings this proceeding in its name for the relief hereinafter prayed, for the use and benefit of the said Jackson Barnett in the discharge of its duty and the trust in protection and preservation of the said property so herein involved and referred to as the restricted proper of the said Jackson Barnett, so received by the defendant Marshall L. Mott as in this complaint alleged, [fol. 52] and the United States by and through its Attorney General hereby authorizes the prosecution of this proceeding by John M. Goldesberry, United States Attorney for the Northern District of Oklahoma and by Charles B. Selby, Special Assistant to the Attorney General under written assignment hereto by the said Attorney General heretofore filed in this cause and court.

Wherefore, premises considered, the United States prays that the defendant, Marshall L. Mott, be required to answer herein, but not under oath, which oath is hereby waived, and that said refendant in his answer be required to fully disclose by description of series, denomination, number and date the bonds so by him received as in this complaint alleged, as well as the time when by him received and the rate of interest therein provided, and that he disclose in his answer if said bonds so by him received are in his custody and now owned by him, or otherwise.

The United States further prays that if in answer or upon a hearing herein, it be disclosed that defendant retains said bonds as owner and in his custody, that this court by its decree order and require said defendant to surrender the same into this court for delivery thereof to the Secretary of the Interior for the use and benefit of the said Jackson Barnett, to be thereby retained and held subject to the restrictions thereon imposed by law to the exclusion of all claim of interest, or right therein by the defendant forever; and in the alternative, if it be disclosed at the hearing of this cause that the defendant has converted said bonds, or any part thereof, by transfer or otherwise, then that the United States have and recover judgment for and on behalf of the said Jackson Barnett against said defendant, for such amount of said bonds as may have been converted, together with interest thereon at the rate of four and one-half per cent per annum from the 1st day of February, 1923, and for the costs of this cause, and if in anywise mistaken in its prayers herein, that the United States for the use and benefit of the said Jackson Barnett, have all other, further general and special relief to which it and the said Jackson Barnett shall be in equity and good conscience entitled under the facts in this case and as in duty bound it will ever pray.

William D. Mitchell, Attorney General of the United States, by Charles B. Selby, Special Assistant to the Attorney General of the United States. John
[fol. 53] M. Goldesberry, United States Attorney, Northern District of Oklahoma. Charles B. Selby, Special Assistant to the Attorney General of the United States.

I hereby acknowledge service of a true and correct copy of each instrument herein contained. 4/15/29

Chas. B. Rogers Attorney for Defendant, Marshall L. Mott.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

OBJECTIONS OF DEFENDANT TO THE GRANTING OF LEAVE TO FILE A SECOND AMENDED BILL—Filed May 4, 1929

Comes now the defendant, Marshall L. Mott, and objects to the granting of the application of the United States for leave to file a second amended, or substitute, bill in this cause, for the following reasons, and upon the following grounds, to-wit:

1. That said second amended bill does not set forth allegations showing any cause of action on the part of the United States of America against the defendant, either in law or in equity.

2. That said second amended bill does not state allegations which entitle the United States to the relief prayed for therein.

3. That said second amended bill does not allege any new matters not heretofore pleaded in the original and first amended bills, and does not state a cause of action at law or in equity in favor of the United States against the defendant.

4. That said second amended bill attempts to assail in this court an official act of the Secretary of the Interior, done in the course of his duty, free from fraud or deception, and wherein he has exercised his discretion in the disposal of royalties received under an oil and gas lease upon the restricted lands of a full-blood Creek Indian, and in persuance to amended section 24 of the regulations of said Secretary, lawfully made and promulgated, and done at the request of and for the interest and benefit of said Indian, which this court has heretofore, in this cause, duly deter-

[fol. 54] mined and decided cannot be done.

5. That this court has already duly decided and determined the sole questions of law and rights of the United States as set forth in the proffered second amended, or substitute, bill, adversely to the United States, from which decision no appeal has been taken or announced, and thereafter, the United States filed in this court a first amended bill, in which it made allegations attempting to charge that the Secretary of the Interior Mr. Fall, had been deceived by certain representations made to him in connection with the request of Jackson Barnett for the transfer of bonds, in said bill referred to, which allegations of deception were directly contrary to and irreconcilable with repeated and various allegations in the original bill herein, and in bills filed by the United States in the Southern District of New York, in the Supreme Court of the District of Columbia, the District of Kansas, the Northern District of Oklahoma, and in the Southern District of California, involving the same transactions contained and set forth in the bills filed in this cause, wherein the United States charged that said official action, in this cause complained of, was taken by the Secretary of the Interior, with full and fair knowledge of all the matters, facts and circumstances in said first amended bill herein charged and set forth as the matters, facts and circumstances about which he had been deceived.

6. That the cause of action, if any be there set forth, which is pleaded in said second amended bill now tendered and for leave to file which, application is filed herein, is wholly barred and suspended by the terms and provisions of an Act of Congress entitled "An act to amend section 9 of the Act of May 27, 1908 (Thirty-fifth Statutes at Large, page 312), and for putting in force in reference to suits involving Indian Titles, the Statutes of Limitations of the State of Oklahoma, and providing for the United States to join in certain actions, and for making judgments binding on all parties, and for other purposes," Approved April 12th, 1926 (Pub. Doc. No. 98—69th Congress, H. R. 4761), and said action cannot now be maintained.

Respectfully submitted.

Marshall L. Mott, by Chas. B. Rogers, His Attorney.

[File endorsement omitted.]

[fol. 55] In United States District Court

Opinion on Application of Complainant for Leave to File a Second Amended Bill of Complaint—Filed May 4, 1929

By this suit the Government, as guardian of a full blood Creek incompetent Indian, one Jackson Barnett, seeks the recovery of fifteen thousand dollars of government bonds heretofore held by the Honorable Secretary of the Interior in trust for said Barnett under the provisions of sections one and two of the Act of Congress 1908, said bonds having been by the Secretary purchased for the account of said incompetent Indian Barnett, out of accumulated royalties coming into his hands from oil and gas leases made by the Indian on his restricted allotment in the Creek Nation, said oil and gas leases having been made with the consent and approval of the Commissioner of Indian Affairs and the Secretary of the Interior representing the Government.

The fact is, out of a very large amount of cash and bonds in the hands of the Honorable Secretary of the Interior derived from royalties on oil and gas found and produced on the restricted lands of the Indian, Jackson Barnett, being thereto so requested, and after being fully advised, the Honorable Secretary turned over to the use and possession of the wife of said Indian, Jackson Barnett, one Anna Laura Barnett, a large amount of bonds theretofore held in trust in his possession for the use and benefit of said Jackson Barnett, and at the same time caused to be pledged in the Equitable Trust Company of New York the further sum of five hundred thousand, face value, of bonds to be by that institution held in trust and a portion of the proceeds paid to said Jackson Barnett. Of the bonds of Jackson Barnett so held in trust by the Honorable Secretary of the Interior and so distributed to Anna Laura Barnett she paid over and delivered to one Harold C. McGugin, her attorney, the sum or amount face value of one hundred and fifty thousand dollars. Thereafter, he, the said McGugin, paid over and delivered to defendant herein the sum or amount, face value, of fifteen thousand dollars of said bonds. This sum or amount of said bonds, or their value, the Government seeks to recover from defendant by decree

in this present suit. In a suit in the Kansas District a bill was filed by the Government to recover against said McGugin the bonds so distributed to the wife of Barnett and turned over to said McGugin. This bill on motion of defendant was dismissed. The original bill of complaint in this suit, in form and averments like that in the McGugin case, was on motion of defendant dismissed. Thereupon the Government was granted leave to file an amended bill of complaint, to which amended bill of complaint, when [fol. 56] filed, defendant again filed a motion to dismiss. The Government virtually confessing said motion to dismiss the amended bill of complaint again came into court and requested leave of court to file a second amended bill of complaint. On this application for leave to file the second amended bill of complaint and on objections to the granting of such leave, the parties have been heard in oral argument and on printed and written briefs, and the matter comes now on for decision.

The Government in this second amended bill of complaint bottoms its right to a recovery, as I understand the case, on the fact that Jackson Barnett was so ignorant and incompetent of mind he could not and did not understand or know what he was requesting in his application to the Honorable Secretary of the Interior for the distribution of his accumulated royalties in the form of bonds held in trust by the Secretary. Now there is no charge in this suit of fraud or corruption made against the Secretary or any one connected with the transaction in any manner representing the government in the distribution of the accumulated royalties in the hands of the Honorable Secretary of the Interior. The case must therefore rest upon the power conferred upon the Honorable Secretary of the Interior to handle and distribute the funds held in trust in his possession arising out of the royalties paid on the extraction of oil and gas from the restricted lands of the incompetent Indian, Jackson Barnett. The reason behind the care and solicitude of the Government for its Indian wards arises from the fact Indians from their lack of business training have always been a prey for shrewd, calculating, unscrupulous white men. Therefore, the Government felt compelled to intrust the property of incompetent Indians like Barnett to agencies of the Government created by Congress for

that purpose. By sections one and two of the Act of Congress, 1908, a plan was adopted of protection of the property rights of incompetent Indians occupying the status of Jackson Barnett. This plan was the creation of a trust in the hands of and under the judgment, control and discretion of the Honorable Secretary of the Interior as to custody and ultimate distribution of the same. In the opinion of the Attorney General of October 20 ,1926, concerning the property of Jackson Barnett, the Attorney General said:

"Congress saw fit to accomplish its purpose of protection of the Indian by creating a trust, by sections 1 and 2 of the Act of 1908, and vested the administration of it in the Secretary of the Interior, without specific limitation of the manner in which he might administer. Hence, the power [fol. 57] so conferred is broader than any power which might have been specifically conferred."

In the exercise of this power the Honorable Secretary of the Interior on October 7, 1922, promulgated and amended regulation applicable to this case, as follows:

"And provided further, that in such individual cases or classes of cases as the Secretary of the Interior may direct, the Superintendent for the Five Civilized Tribes shall cause such payments as may be authorized to be made out of the royalties and other individual Indian funds of the restricted Indians, minors and incompetents, to be paid direct to the Indians, entitled thereto, or to be otherwise paid out for their benefit and use, as the Secretary of the Interior may authorize in said cases."

That the Secretary of the Interior, holding the property derived from accumulated royalties in his hands in trust for the incompetent full blood Creek Indian Jackson Barnett, had full power and authority to make the distribution he did in this case, and to bind the Government thereto, is settled by adjudications binding here. See Parker v. Richard, 250 U. S. 236; U. S. v. Hinkle, 261 Fed. 518, and many other cases.

It follows, as there is no question of fraud charged or raised in this case against the act of the Honorable Secretary of the Interior, the Commissioner of Indian Affairs, or other person representing him in the handling of the funds

of Jackson Barnett, that action must be approved as done under full power and authority conferred upon the Secretary of the Interior by the Congress. And the motion to file the second amended bill of complaint must be denied.

It is so ordered.

John C. Pollock, U. S. District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER DENYING MOTION TO FILE SECOND AMENDED BILL OF COMPLAINT—Filed May 16, 1929

This cause coming on for hearing on the verified application of the United States herein filed for leave to file a second amended or substitute bill of complaint, a copy of which is attached to said application, and on the objections to the granting of said application heretofore filed by defendant Marshall L. Mott, the United States appearing [fol. 58] by Mr. Charles B. Selby, Special Assistant to the Attorney General, and the defendant appearing by his record counsel, Mr. Charles B. Rogers, of Tulsa, Oklahoma, the court, after a consideration of said application and objections thereto, on written argument and briefs of the respective counsel herein, submitted by order of this court, and after being fully advised in the premises, finds and determines as follows:

That the original bill in this cause was dismissed by the Honorable Franklin E. Kennamer, Judge of this said court on motion of the defendant, for the reason that said original bill was insufficient in statement of facts to constitute a valid cause of action in equity against defendant in favor of the United States, and that, thereafter, on leave of court, an amended bill of complaint was filed by the United States herein, against which a motion to dismiss, filed by the defendant herein, was directed, based on the same reasons and grounds as were directed against said original bill of complaint, pending which latter motion, on request the United States was given leave to file its application to file a new amended and substitute bill of complaint, with the copy of such proposed new amended bill of complaint desired to be filed to be thereto attached, and all of which

was regularly filed herein, by reason of which, as a matter of law, the United States confessed the insufficiency of, and abandoned its said first amended bill of complaint above, and:

The Court heretofore, on May 4th, 1929, after a full consideration of the premises aforesaid, having filed in this cause a memorandum of decision on said application of the United States for leave to so file a second amended bill of complaint herein, in form shown by the copy thereof attached to its said application, finding and holding in said memorandum decision that the said proposed amended or substitute bill of complaint is insufficient in statement of facts to constitute a valid cause of action in equity in favor of the United States and against the defendant, and, for that reason, the said application should be denied.

Now, therefore, in accordance with said finding and conclusion aforesaid, it is by the court ordered, adjudged and decreed that said application of the United States for leave to file its said second amended bill of complaint, as shown by copy thereof attached to the said application, be and the same is hereby denied, and this cause is dismissed, to which findings, conclusion, orders, judgment and decree the complainant, United States, by its said counsel at the time excepts and which exceptions are thereto allowed.

[fol. 59] Given at Tulsa on this 16 day of May, 1929.

John C. Pollock, Judge.

Approved as to form:

—— ——, United States District Attorney, Northern District Oklahoma. Charles B. Selby, Special Assistant to the Attorney General of the United States. Chas. B. Rogers, Atty. for M. L. Mott.

In United States District Court

Petition for Appeal and Order Allowing Same—Filed June 15, 1929

To the Honorable John C. Pollock, District Judge:

Comes now the United States of America, plaintiff above named, by and through its attorneys, John M. Goldesberry, United States Attorney for the Northern District of Oklahoma, and Charles B. Selby, Special Assistant to the Attor-

ney General of the United States, each hereunto duly authorized, and feeling itself aggrieved at the decision and judgment rendered and entered herein by the court on May 4th, 1929, and by the decree thereon rendered and entered herein on the 16th day of May, A. D. 1929, by which it was adjudged and decreed that the written, verified application of the United States of America for leave of court to file herein with the clerk of this court a second amended bill of complaint against said defendant, Marshall L. Mott, tendered and offered for filing at the time of presenting said application to this court, be and was denied and this cause dismissed, in which said adjudication and the proceedings had in connection with the entry thereof, certain errors were committed prejudicial to the plaintiff, from which said decision, adjudication and decree, by reason of said errors, the United States of America does hereby appeal to the United States Circuit Court of Appeals for the Tenth Circuit of the United States, for the reasons set forth in the assignments of error filed herewiih.

[fol. 60] Wherefore, the United States of America, plaintiff herein, prays that an appeal herein may be to it allowed to the said United States Circuit Court of Appeals for the said Tenth Circuit of the United States for the correction of the said errors so complained of and that citation be issued herein as by law provided, and that a transcript of the record, proceedings, papers and documents involved in this appeal and upon which said adjudication and decree was based, duly authenticated, be sent to the said United States Circuit Court of Appeals for the said Tenth District of the United States under and in conformity with law and the rules of court in such cases made and provided.

Dated at Tulsa, Oklahoma, June 11, 1929.

Jno. M. Goldesberry, United States District Attorney, Northern District of Oklahoma; Charles B. Selby, Special Assistant to the Attorney General of United States, Attorneys for United States of America, Plaintiff.

Appeal as prayed for is hereby allowed.

Dated at Kansas City, June 15th, 1929.

John C. Pollock, United States District Judge.

[File endorsement omitted.]

In United States District Court

Assignments of Error—Filed June 15, 1929

Comes now the United States of America, plaintiff herein, by its attorneys John M. Goldesberry, United States Attorney for the Northern District of Oklahoma, and Charles B. Selby, Special Assistant to the Attorney General of the United States, each thereof duly hereunto authorized, and files the following assignments of error upon which it will rely in the prosecution of its appeal from the decision, adjudication and decree of this court herein rendered and en-
[fol. 61] tered on the 4th day of May, 1929, and on the 16th day of May, 1929.

First. That the United States District Court for the Northern District of Oklahoma in said cause erred as a matter of law in holding and deciding, and in accordance therewith adjudging and decreeing that the second amended bill of complaint on behalf of the plaintiff United States of America, tendered and offered thereby for filing at the time of presenting and hearing of said application was insufficient in statement of facts to constitute a valid cause of action in equity in favor of the United States and against the defendant.

Second. That said District Court of the United States for the Northern District of Oklahoma in said cause erred in its decision and holding, and in accordance therewith, adjudging and decreeing that the proposed second amended bill of complaint tendered and offered for filing at the time of presenting said application for leave and permission to file the same, was insufficient in statement of facts to constitute a valid cause of action in equity in favor of the United States and against the defendant and in ordering, adjudging and decreeing a denial of said application of the plaintiff, the United States of America, and in dismissing plaintiff's cause of action.

Third. That the said District Court of the United States erred in refusing to hold and to decide and to accordingly adjudicate and decree, that the said proposed second amended bill of complaint tendered and offered for filing by the plaintiff, the United States of America, at the time of presenting for consideration to the court the said applica-

tion for permission of court to so file the same, stated facts sufficient to constitute a valid cause of action in equity in favor of the plaintiff United States of America and against the defendant, Marshall L. Mott.

Fourth. That the said District Court of the United States for the Northern District of Oklahoma in said cause erred in refusing to hold and to decide and to accordingly adjudicate and decree, that the proposed second amended bill of complaint tendered and offered for filing at the time of presenting for consideration to the court said application for permission of court to so file the same, stated facts sufficient to constitute a valid cause of action in equity in favor of the plaintiff, the United States of America, and against the defendant, Marshall L. Mott, and in refusing to grant leave and permission to the plaintiff, the United States of America, to file its said second amended bill of complaint.

[fol. 62] Fifth. That said District Court of the United States for said Northern District of Oklahoma in said cause in its conclusion, holding and adjudication herein erred in concluding, holding and adjudicating that the plaintiff, the United States of America, by the filing and presenting of its said application for leave to file said second amended bill of complaint, as a matter of law, confessed defendant's motion directed against and abandoned its said amended bill of complaint.

Sixth. That said decision, adjudication and decree of said District Court of the United States for the Northern District of Oklahoma, in refusing leave and permission to the plaintiff, the United States of America, to file its said second amended bill of complaint tendered with said application for leave to so file the same, and in dismissing the cause, was an abuse of judicial discretion and power.

Wherefore, the United States of America, plaintiff and appellant herein, prays that the holding decision, adjudication and decree of said District Court of the United States for the said Northern District of Oklahoma, so herein complained of, be reversed and that said District Court for said Northern District of Oklahoma, be ordered to enter a decree so reversing its said holding, decision, adjudication and decree.

Dated at Tulsa, Oklahoma, this 15th day of June, A. D. 1929.

Jno. M. Goldesberry, United States Attorney, Northern District of Oklahoma; Charles B. Selby, Special Assistant to the Attorney General of the United States, Attorneys for Plaintiff, United States of America.

[File endorsement omitted.]

Citation, in usual form, showing service on Charles B. Rogers, Filed June 15, 1929, omitted in priting.

[fol. 63] IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed June 17, 1929

To H. P. Warfield, Clerk of the United States District Court for the Northern District of Oklahoma:

You will please incorporate in the transcript of the record on appeal taken by the United States of America, Appellant, versus Marshall L. Mott, Appellee, No. 343 Equity, the following portions of the record thereof, to-wit:

[fol. 64] 1. Amended bill of complaint by the United States of America, filed herein on the 13th day of Sept. 1928.

2. Motion of Marshall L. Mott to dismiss, filed on the 29th day of Sept. 1928.

3. Supplemental motion of Marshall L. Mott to dismiss, filed on the 10th day of Oct. 1928.

4. Order of Pollock, Judge, dated March 25, 1929, continuing defendant's motion for hearing in Oklahoma City to April 22, 1929, and providing for hearing application of United States to file a second amended bill of complaint at that time, said order being filed on the 25th day of March, 1929.

5. Verified application of the United States for leave to file a proposed amended bill of complaint on behalf of the United States, with verification thereof by Charles B. Selby, to which application, and forming a part thereof, is attached the proposed second amended bill of complaint sought to be filed, and to which is attached also notice served on Charles B. Rogers of the filing of application and acknowledgment of service thereof, filed on the 15th day of April, 1929.

6. Objections of defendant to the granting of leave to file Government's second amended bill, submitted to the court April 22, 1929, at Oklahoma City, and by the court returned to the clerk and filed May 4, 1929.

7. Memorandum decision of Pollock, Judge, overruling Government's application, filed May 4, 1929.

8. Final order or decree of Pollock, Judge, denying the Government's right to file second amended bill and dismissing Government's case, filed on May 16, 1929.

9. Petition of United States of America for allowance of appeal to United States Circuit Court of Appeals for the Tenth Circuit, filed on the 15th day of June, 1929.

10. Order of Pollock, Judge, allowing appeal, filed on the 15th day of June, 1929.

11. Citation to defendant, Marshall L. Mott and Charles B. Rogers, record attorney, on appeal, filed on the 15th day of June, 1929.

12. Assignments of error on behalf of United States, filed on the 15th day of June, 1929.

13. Direction to clerk to print record.

[fol. 65] 14. This praecipe for transcript and stipulation, and acknowledgment of service hereof by counsel for appellee.

Appellant further requests that said record be printed under the supervision of the clerk of this court and that same be filed in the office of the clerk of the United States

Circuit Court of Appeals for the Tenth Circuit at Denver, Colorado, on or before the 24th day of July, 1929.

Jno. M. Goldesberry, United States Attorney for the Northern District of Oklahoma; Louis N. Stivers, Assistant United States Attorney for Northern District of Oklahoma; Chas. B. Selby, Special Assistant to Attorney General of the United States, assigned to this Cause, Solicitors for Appellant, United States of America.

Acknowledgment of Service and Stipulation

Service of the foregoing præcipe for transcript and receipt of a true and correct copy thereof is hereby acknowledged as personally made upon me this 15th day of June, 1929.

It is stipulated and agreed between the respective solicitors for the respective parties hereto that upon the filing of the above and foregoing praecipe the clerk may approve the printing on appeal of the portions of the record therein indicated, and it is further stipulated and agreed between the parties that time to suggest additional portions of the record is hereby waived by the appellee, and that the record on appeal may be printed as indicated in the foregoing praecipe.

Jno. M. Goldesberry, United States Attorney for the Northern District of Oklahoma; Louis N. Stivers, Assistant United States Attorney for the Northern District of Oklahoma; Chas. B. Selby, Special Assistant to Attorney General of United States, [fol. 66] Assigned to this Cause, Solicitors for Appellant, United States of America. Chas. B. Rogers, by E. S. Booth, Record Solicitor for Appellee, Marshall L. Mott.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

Appearances of counsel omitted in printing.

[fol. 67] Minute entry of argument and submission October 30, 1929, omitted in printing.

[fol. 68] IN UNITED STATES CIRCUIT COURT OF APPEALS, TENTH CIRCUIT, OCTOBER TERM, 1929

Mr. Charles B. Selby, Special Assistant to the Attorney General, (Mr. Seth W. Richardson, Assistant Attorney General of the United States, Mr. John M. Goldesberry, United States Attorney, and Mr. Louis N. Stivers, Assistant United States Attorney, were with him on the brief), for appellant.

Mr. Edwin S. Booth (Mr. Chas. B. Rogers was with him on the brief), for appellee.

Before Lewis, Phillips, and McDermott, Circuit Judges

OPINION—Jan. 27, 1930

LEWIS, Circuit Judge, delivered the opinion of the court.

This suit was brought by the United States in behalf of one Jackson Barnett, a full-blood Creek Indian, to recover of appellee Mott $15,000 face value U. S. Government Bonds, or their proceeds or value if they have been converted. It is alleged that the bonds are the property of Barnett and that they came into the possession of Mott in this way: Barnett was allotted 160 acres out of Creek Tribal lands, which proved to be valuable in oil deposits. With the approval of the Secretary of the Interior the land was leased and large sums came into his possession from royalties paid for the oil produced, and these royalties were invested in United States bonds, amounting in face value to more than one million dollars. The bonds were held by the Secretary of the Treasury. Early in 1923 Barnett and his wife went to Washington, and with assistance of counsel sought to induce the Secretary of the Interior to deliver to them $1,100,000 face value of these bonds, with the understanding that they would be used or disposed of as hereinafter stated. He finally complied with their request, got the bonds from the Treasury and $550,000 in face value were delivered to the Equitable Trust Company of New York, which was to hold them as trustee and from the in-

come pay Barnett $20,000 yearly so long as he should live, [fol. 69] the remainder of the income until Barnett's death to go to the American Baptist Home Mission Society of New York, and on the death of Barnett all of the income to be paid to that society. At the same time the additional $550,000 face value U. S. bonds belonging to Barnett were turned over to Barnett's wife, whom he had recently married and who is a white woman. Of the bonds so turned over to Barnett's wife the understanding was that she should deposit $200,000 thereof in the Riggs National Bank of Washington, D. C., to be held in trust, and of the yearly income $7,500 was to be paid to Barnett during his life, the remainder of the income during that time, if any, to be paid to his wife, and upon his death the whole income and various portions of the principal, were from time to time to be also paid to her or to her daughter until all thereof had been so paid. She complied with this part of the arrangement and deposited the $200,000 in bonds with the bank. Of the remaining $350,000 face value of said bonds turned over to her she immediately delivered $150,000 thereof to Harold C. McGugin, who appears to have been the chief adviser in the whole affair, and McGugin delivered $15,000 face value of said bonds to the defendant Mott. These are the bonds sued for.

Plaintiff further charged that the Secretary of the Interior, McGugin, Mott and others who participated in the transaction knew that all of the bonds were the property of Barnett and had been purchased for him with royalties on oil taken from his restricted allotment; they also knew that Barnett was a mental incompetent without capacity to make or to initiate the disposition and distribution of said bonds and that the officers of the United States participating in the transaction were without authority of law to dispose of said bonds in the manner stated, and that the disposition made of them was contrary to the purpose, intent and effect of the law in such case; that Barnett at the time was of the age of about 70 years, illiterate, mentally incompetent and wholly incapable of managing his own affairs or of caring for his property, and unable to appreciate and understand the nature and extent thereof, and that the delivery and distribution of said bonds was based upon a purported request in writing bearing the thumb print of

said Barnett, which by reason of his mental infirmity he was wholly unable to comprehend and understand.

The foregoing facts were alleged in a second amended complaint. The original complaint is not in the record. The first amended complaint contains in substance the allegations of fact that have been stated, and in addition thereto [fol. 70] it charged fraudulent conduct and a conspiracy on the part of Barnett's wife, McGugin, Mott and others to get for themselves a large part of Barnett's property. The second amended complaint omitted the allegations of fraud and conspiracy. The court below held that the tendered pleading did not state any ground for relief and denied the request to file it. This appeal was then taken, the error assigned being the refusal of the court to permit the second amended complaint to be filed. The theory of the suit, disclosed in the tendered pleading, is that the Secretary of the Interior exceeded his power in delivering the bonds, that he was fully advised of the whole plan and purpose of McGugin, et al., and the distribution of the bonds to be made after delivery, and that because thereof the bonds are still the property of Barnett.

The Act of May 27, 1908 (35 Stat. 312), treats of allotments to members of the Five Civilized Tribes, restrictions on disposition by the allottees and the power of the Secretary of the Interior in relation thereto. Section one of the Act provides, among other things, "and all allotted lands of enrolled full bloods * * * shall not be subject to alienation, contract to sell, power of attorney, or any other incumbrance prior to April twenty-six, nineteen hundred and thirty-one, except that the Secretary of the Interior may remove such restrictions, wholly or in part, under such rules and regulations concerning terms of sale and disposal of the proceeds for the benefit of the respective Indians as he may prescribe." Section 2, in part: "That leases of restricted lands for oil, gas, or other mineral purposes, * * * may be made with the approval of the Secretary of the Interior, under rules and regulations provided by the Secretary of the Interior, and not otherwise." Section 5: "That any attempted alienation or incumbrance by deed, mortgage, contract to sell, power of attorney, or other instrument or method of incumbering real

estate, made before or after the approval of this act, which affects the title of the land allotted to allottees of the Five Civilized Tribes prior to removal of restrictions therefrom, and also any lease of such restricted land made in violation of law before or after the approval of this act shall be absolutely null and void." These provisions of the Act established Barnett's legal incompetency to manage his own affairs, and so we need give no consideration to the allegations that he was in fact mentally incompetent. Congress, in the exercise of undoubted power, provided in this Act that the Government should control and preserve Barnett's property. This protecting care included not only his allotment but also the [fol. 71] income therefrom. Sunderland v. United States, 266 U. S. 226; United States v. Brown, 8 F. (2d) 564. The United States, through its Secretary, took the royalties for mineral produced from his allotment, as his guardian, and held them and the bonds purchased with them in trust for him. Assuming the Secretary had power to remove restrictions on Barnett's disposition of the bonds, as he had to remove restrictions on disposition of his allottment; still the Act further provided that disposal of the proceeds, in event restrictions were removed, should be for Barnett's benefit. The duty of the Secretary, then, did not cease with removing restrictions and thus permitting disposal, but he was also charged with the further duty and authority in the same transaction of seeing that disposal should be made for his benefit. Manifestly, it is the intention of the Act to safeguard at all times the property of full-bloods, whether allotments or proceeds therefrom, for their benefit. The bonds were Barnett's property and the Secretary, as Government agent, had the power and was charged with the duty of holding control over their disposition for the benefit of Barnett, and for no one else. He had no right to dispose of them as gifts or donations nor consent to such disposal. Of course, no one would argue that reasonable sums for those purposes might not be disbursed with the Secretary's consent, and likewise amounts from time to time for Barnett's proper maintenance. But that is not this case. The statute is an assurance of protection against spoliation. The Secretary's duty and power are not complied with by simply removing restrictions on alienation to a large part, probably here the far greater part, of the ward's estate; as part thereof it is

further required of him that he agree to the terms of sale and the disposal of the proceeds. He is given no authority to turn over the property or its proceeds to the Indian, nor consent that others might take to themselves the whole or a large part of it. Nor do we know of any authority in him to surrender the trust in which these bonds were held by the Government and consent to their deposit with others as trustees on terms that took from Barnett all property right in the principal and denied to him their full interest yield. As to the $350,000 given to Mrs. Barnett, she could on delivery make disposition as she might wish, and she at once did so to the extent of almost half. In Barnett v. Equitable Trust Co., 21 F. (2d) 325, Judge Knox ordered that the $550,000 in bonds held by the trust company be returned to the Secretary of the Interior. It may be conceded that if under facts in a given case it should be debatable whether action of the Secretary was for the benefit of the allottee, his judgment [fol. 72] and action ought to control; but we are unable to see any ground on which a claim may be made that the disposition of any of these bonds was for the benefit of Barnett, within the meaning and requirement of the statute. It seems clear to us that the statute is obligatory in that respect, and that the Secretary had no right to consent to the transaction. He had the power and was charged with the duty of preventing it. And so we conclude there was arbitrary and unauthorized action by the Secretary violative of the trust, with full knowledge on the part of all participants.

Where an executive officer, under his misconstruction of the law, has acted without or beyond the powers given him, the courts have jurisdiction to restore the status quo ante insofar as that may be done. Garfield v. Goldsby, 211 U. S. 249, 261, 262; Work v. Louisiana, 269 U. S. 250, 254; Santa Fe Pacific R. R. Co. v. Fall, 259 U. S. 197, 199; Payne v. Central Pacific Ry Co., 255 U. S. 228, 238; Williamson v. United States, 207 U. S. 425, 462; Hemmer v. United States, 204 Fed. 898, 905; Leecy v. United States, 190 Fed. 289, 292.

The decree of dismissal is reversed with directions to reinstate the suit, permit appellant to file its tendered second amended complaint and give appellee reasonable time within which to file answer.

IN UNITED STATES CIRCUIT COURT OF APPEALS, TENTH CIRCUIT

DECREE—Filed Feb. 3, 1930.

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said District Court in this cause be and the same is hereby reversed; that this cause be and the same is hereby remanded to said District Court with directions to reinstate the suit, permit appellant to file its tendered second amended complaint and give appellee reasonable time within which to file answer; and that United States of America, appellant, have and recover against Marshall L. Mott, appellee, its costs herein and have execution therefor as at law.

[fol. 73] IN UNITED STATES CIRCUIT COURT OF APPEALS

MANDATE

UNITED STATES OF AMERICA, ss:

The President of the United States of America, to the Honorable the Judges of the District Court of the United States for the Northern District of Oklahoma, Greeting:

Whereas, lately in the District Court of the United States for the Northern District of Oklahoma, before you, or some of you in a cause between United States of America, Plaintiff, and Marshall L. Mott, Defendant, No. 343 Equity, the decree of the said District Court, in said cause, entered on May 16, 1929, was in the following words, viz:

"Now, therefore, in accordance with said finding and conclusion aforesaid, it is by the court ordered, adjudged and decreed that said application of the United States for leave to file its said second amended bill of complaint, as shown by copy thereof attached to the said application, be and the same is hereby denied, and this cause is dismissed, to which findings, conclusion, orders, judgment and decree the complainant, United States, by its said counsel at the time excepts and which exceptions are thereto allowed."

as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals, Tenth Circuit, by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears;

And Whereas, at the February Term, in the year of our Lord one thousand nine hunderd and thirty, the said cause came on to be heard before the said United States Circuit Court of Appeals, on the transcript of the record from said District Court and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said District Court, in this cause, be and the same is hereby reversed; that this cause be and the same is hereby remanded to said District Court with directions to reinstate the suit, permit appellant to file its tendered second amended complaint and give appellee reasonable time within which to file answer; and that United States of America, appellant, have and recover against Marshall L. Mott, appellee, its costs herein and have execution therefor as at law.

February 3, 1930.

[fol. 74] You, therefore, are hereby commanded that such further proceedings be had in said cause, not inconsistent with the opinion and decree of this court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Charles E. Hughes, Chief Justice of the United States, the 12th day of March, in the year of our Lord one thousand nine hundred and thirty.

Costs of Appellant

Clerk	$29.45
Printing Record	
Attorney	20.00
	$49.45

Albert Trego, Clerk of the United States Circuit Court of Appeals, Tenth Circuit.

In United States Circuit Court of Appeals

In Praecipe for Transcript on Appeal

To the Clerk of the Circuit Court of Appeals:

Prepare and have printed at least fourteen (14) copies of the proce-dings in said cause in your court including the

opinion and decree herein, with proper certificates attached thereto, and cause the same to be properly titled, indexed and paged and added to and bound with fourteen (14) copies of the transcript of record filed in your court in said cause, two of which fourteen copies are transmitted by me today for use with 12 copies which your office will furnish, said record when completed to be transmitted to me at Tulsa, Oklahoma. Proof of service of a copy of this praecipe on Government counsel is attached hereto.

Edwin S. Booth, Chas. B. Rogers, Attorneys for Marshall L. Mott, Appellee.

The United States of America, through Louis N. Stivers, Assistant United States District Attorney for the Northern District of Oklahoma, hereby acknowledges service of a true copy of the above praecipe for record on appeal by [fol. 75] delivery to said attorney of such copy, this 19th day of March, 1930.

Louis N. Stivers, W. B. Blair, Assistant United States District Attorney.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 76] Order Allowing Certiorari—Filed May 19, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 34,941. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 78. Marshall L. Mott, petitioner, vs. The United States of America. Petition for writ of certiorari and exhibit thereto. Filed April 11, 1930. File No. 34,941.